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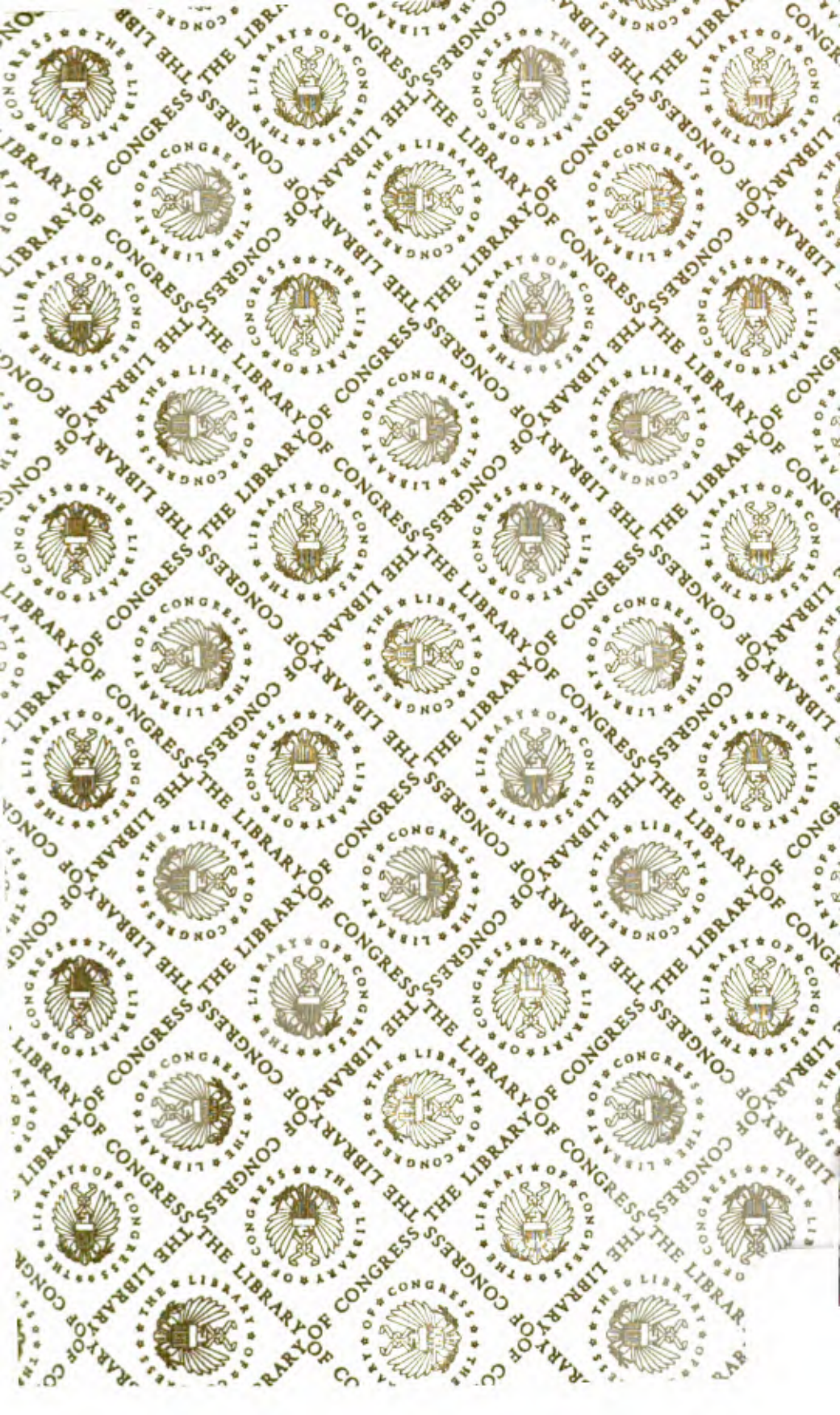
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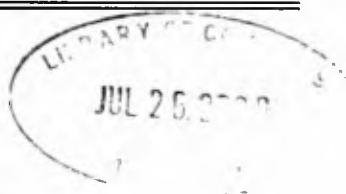
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LEGAL SERVICES CORPORATION



HEARING
BEFORE THE
SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTH CONGRESS
FIRST SESSION

SEPTEMBER 29, 1999

Serial No. 27



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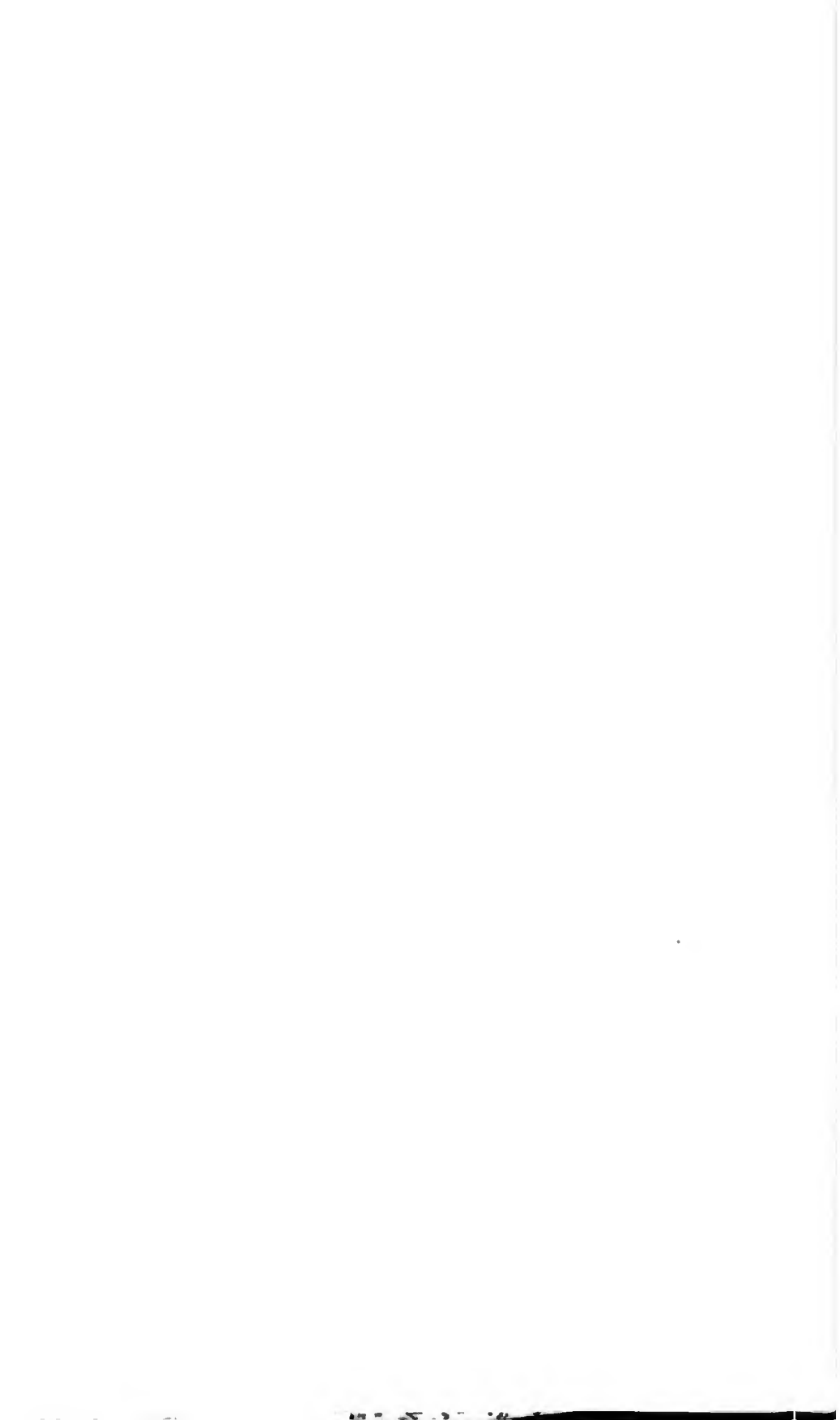
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LEGAL SERVICES CORPORATION

WEDNESDAY, SEPTEMBER 29, 1999

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m. in room 2237, Rayburn House Office Building, Hon. George W. Gekas [chairman of the subcommittee] presiding.

Present: Representatives George W. Gekas, Steve Chabot, Mary Bono, David Vitter, Jerrold Nadler, Tammy Baldwin, Melvin L. Watt, and William D. Delahunt.

Staff present Raymond V. Smietanka, Subcommittee Chief Counsel; Susan Jensen-Conklin, Subcommittee Counsel; James W. Harper, Counsel; Sarah Zaffina, Subcommittee Staff Assistant; Daniel Freeman, Full Committee Counsel and Parliamentarian; and David Lachmann, Minority Professional Staff Member.

OPENING STATEMENT OF CHAIRMAN GEKAS

Mr. GEKAS. The hour of 2 o'clock having arrived, the committee will come to order.

By reason of the existence of the Rules of the House, we cannot proceed with the hearing until a hearing quorum is present. Two members constitutes the necessary quorum. Only the Chair is present at the moment. At the very least, we have kept faith with our theme of opening every committee meeting and every hearing, thus far, on time.

Let the record reflect that we started it on time. We will recess until the appearance of another member.

[Recess.]

Mr. GEKAS. The committee will come to order. We note the presence of the gentleman from Massachusetts, Mr. Delahunt, who, along with the chairman, constitutes a hearing quorum. We will now be able to proceed.

Some of you will recall when the Legal Services appropriation came to the floor last summer, there was a controversy about whether or not some of the funding should be restored. The question that ran through many of those intent on not supporting an increase in funds was the rampant story of over-counting of cases reported by the Legal Services Corporation.

In the face of that, you will also recall, I supported the interim refunding of the Legal Services Corporation based on my assertion

at that juncture that in due time our subcommittee would consider and act upon a hearing to delve into those very same allegations.

I characterized them as allegations, and then said that those allegations deserve a hearing. That's why we are here today.

I have an open mind as to the nature, substance, quantity, and quality of the alleged abuses, and I will maintain that open mind throughout. But I must say that the documentation of what we fear is rather strong and it occupies a great part of our task in approaching this problem.

So when the witnesses relate their portions of this, keep in mind that this has to do with the future of the Legal Services Corporation. It's not over-dramatic, not melodramatic, but factual that confidence in the Legal Services Corporation depends on whether or not the Members of Congress can have confidence in the sub-parts of the Legal Services Corporation—what they do, how they do it, what they spend their money for, what accounting procedures they use, and how they account, generally, to the public and to Congress.

[The prepared statement of Mr. Gekas follows:]

PREPARED STATEMENT OF HON. GEORGE W. GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND CHAIRMAN, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

Last August, when we were on the floor debating the level of appropriations for the Legal Services Corporation, I very reluctantly supported an amendment offered to reinstate some of its funding. The reason for my extreme reluctance was that—even though I have always supported the right of the poor to have access to the court systems of our country—I believed and continue to believe that there are certain abuses, alleged or actual or real, within the Legal Services Corporation and its grantees that cry out for reform. One of these areas was the need to make Legal Services more accountable.

Indeed, the Appropriations Committee in its report excoriated Legal Services on that very issue. In particular, it cited serious concerns about Legal Service's case service reporting statistics and related data reports.

Nevertheless, as I said last August, we should consider the matters cited by the Appropriations Committee as allegations constituting an "indictment" against the Legal Services Corporation. I also said that we should, as fact-finders, proceed with hearings to examine them and to make sure that this never occurs again.

Today's hearing is the manifestation of my promise. It also signals the beginning of an extensive analysis that we will undertake with respect to this problem and others that have surfaced. It is my hope that as we determine the truth of these allegations today and in further hearings, we will prepare a comprehensive record that can be presented to the Appropriations Committee in time for the next funding cycle.

I must say, however, that at even at this early stage in the process, the reports by GAO and other entities strongly call into question the credibility of Legal Services Corporation. If we cannot rely on their case statistics, what can we believe?

Hopefully, we'll get to the truth of some of these allegations with the assistance of our esteemed witnesses today.

Mr. GEKAS. We are now waiting the return to the bench of the gentleman from Massachusetts. In the meantime I'll sing a song. [Laughter.]

The gentleman from Louisiana, Mr. Vitter, has joined us. Does he have an opening statement?

Mr. VITTER. I do not at this time. Thank you, Mr. Chairman.

Mr. GEKAS. We're grateful for that.

And Mr. Delahunt has no opening statement. We can proceed with the hearing as contemplated.

The first witness is Mr. Quatrevaux, who has served as inspector general for the Legal Services Corporation since 1991. In that capacity, he is responsible for ensuring that the Corporation complies with its accountability and integrity requirements pursuant to the Inspector General Act.

Prior to that appointment, Mr. Quatrevaux served in the United States Army from 1967 or 1987, where he was a company commander in the Vietnam War. He retired from active duty as a lieutenant colonel, later held various positions with the Department of Defense.

Mr. Quatrevaux received a BA in economics from Louisiana State University in 1969 and an MBA from Tulane University in 1975.

At the witness table with him is Dr. Laurie Ekstrand, the director of the administration of justice issues division at the General Accounting Office. She has been with GAO for 16 years, during which time she has served as an associate director of Federal work force issues, chief social scientist for the general government division, and as assistant director for the health, education, and human services division. She also spent a year in 1997 at the World Bank as a senior evaluation officer.

Dr. Ekstrand received her MS and Ph.D. degrees from Florida State University and completed her undergraduate work at the University of Maryland.

In addition to her work at GAO, Dr. Ekstrand is an adjunct associate professor at the American University School of Public Affairs.

Dr. Ekstrand is accompanied by Dr. Evi Rezmovic, who is an assistant director with GAO's administration of justice division. She is a methodologist who has conducted studies for the GAO and the private sector for 20 years.

Dr. Rezmovic received her Ph.D. from Northwestern University.

Also accompanying Dr. Ekstrand is Jan Montgomery, who is the assistant general counsel for GAO's administration of justice division.

Ms. Montgomery received her law degree from Georgetown University Law Center in 1986.

Let the record indicate that the lady from Wisconsin, a member of our committee, is also present, and so we have more than an established quorum for the purposes of a hearing.

We also want to announce that we have another pending matter, because this hearing is scheduled simultaneously with a markup of the Regulatory Fair Warning Act of 1999. So now, because we have a working quorum, four vibrant bodies of the committee being present, we will recess the hearing on the Legal Services Corporation and move into the markup session on the Regulatory Fair Warning Act of 1999, which I now call up.

[Whereupon, the subcommittee proceeded to other business.]

Mr. GEKAS. We recognize Mr. Quatrevaux.

We normally allot 5 minutes for the individuals within which to testify, with the understanding that their written statements, of course, will become a part of the record. In both your cases, Mr. Quatrevaux and Dr. Ekstrand, we will bend a little bit if you need extra time.

Mr. Quatrevaux?

Mr. NADLER. Will we have opening statements on this?

Mr. GEKAS. Yes. Yes, we are interrupted again. The gentleman from New York wishes to provide an opening statement, and he is accorded 5 minutes for that purpose.

Mr. NADLER. Yes. First of all, before my 5 minutes, I ask unanimous consent to admit into the record an opening statement on behalf of Mr. Conyers.

Mr. GEKAS. Without objection.

Mr. NADLER. Thank you.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF MICHIGAN

It's a sad statement on the so-called "Republican Revolution" that one of its principal victims has been the Legal Services Corporation.

It's difficult to conceive of a concept that is more universal to the American people than "equal justice." For many years, there was a bipartisan consensus that we should use a modest amount of Federal funds to provide legal representation for the very poorest among us, while at the same time leveraging and encouraging increased participation by the private bar.

Yet this Republican Congress has waged an all out assault on legal services. The budget has been cut repeatedly and, just a few years ago, the Republican balanced budget bill proposed completely eliminating the program by 1998. On top of these cuts, they have piled on a series of burdensome and non-sensical restrictions on the authority of legal services to represent the poor. Even more disturbingly, many of the changes we have seen were adopted at the specific behest of special interests who are subject to suit abusing the rights of the poor.

The results of these Republican "reforms" have been devastating. Some 100 offices have been closed, 5,850 professionals have been let go, and most importantly, tens of thousands of the most vulnerable people in our country have had their legal rights trampled.

In some cases, the ramifications of the Republican changes have been fatal. For example, Mariella Batista, a 28-year-old Cuban immigrant, was murdered by her estranged husband in California—just a week before a local legal services office was forced to reject her desperate pleas for help in getting a protective order to keep him away. The legal services office was barred from representing immigrants who are now lawful permanent residents. But Ms. Batista was in the country on a "protected parole" status and was in the process of obtaining her permanent resident status.

In the past five years, we have held numerous hearings on legal services, and all of the hearings have focused upon ways in which we can cut and eliminate legal services instead of ways in which its usefulness and effectiveness can be broadened and enhanced. Instead of allowing local services providers to make decisions about the best ways of helping the poor, this Congress has decided that they should micromanage the process from Washington.

Our country was founded upon the principal of equal justice for all. The Legal Services Corporation is the best means we have of turning this promise into a reality—why don't we try letting the LSC do its job? Thank you, Mr. Chairman.

Mr. NADLER. Thank you, Mr. Chairman.

Today we review the activities of the Legal Services Corporation, which was established by Congress in 1974 to provide legal assistance to Americans too poor to afford competent legal aid in many types of civil matters.

The right to counsel in our society is, without question, invaluable. The laws which govern everyday activities are often complex, and citizens require expert professional assistance, if only to assure compliance with the law.

In fact, today we are marking up the Regulatory Fair Warning Act, which recognizes that sometimes individuals and small businesses get trapped in the maze of legal requirements and procedures.

The Legal Services Corporation, however, has committed the unpardonable political sin of defending the poor and powerless

against people with access to PACs, who can make large campaign contributions. Given that reality and the institutionalized corruption of our current campaign finance laws, it is a wonder that the corporation's antagonists have failed to eliminate it entirely.

Their failure to do so says something, I hope, that is positive about our Government and our Nation.

How important is the Legal Services Corporation? Well, I would refer the members of the subcommittee back to a hearing that this subcommittee held in the last Congress on the Federal Agency Compliance Act, at which one of today's witnesses, Mr. John Pickering, testified. During that hearing, which dealt with the predicament of individuals who could not get Federal agencies to obey the law of the circuit and who lost millions in Social Security benefits as a consequence, we learned from the lawyer who successfully sued the Social Security Administration in the Hyatt case that that case had been brought as a class action suit with the assistance of legal service grantees—at a time when that was still legal, so no one should get excited.

I want to read what the lawyer in the Hyatt case, who was a witness for the majority, said at that time about that. He said, "The Hyatt case was handled by way of a collaborative effort between my firm, Robinson, Bradshaw, & Hinson, which is basically a corporate law firm, and the local Legal Services office. I know there's a lot of controversy about Legal Services. In my personal experience, I found that collaboration extremely effective, and I think it would have been very, very difficult to obtain the results we did in Hyatt."

I would remind people the results in Hyatt were to overturn the Social Security Administration's defiance of the law of the circuit in withholding Social Security checks from people who should get them.

To continue his quote, "It would have been very, very difficult to obtain the results we did in Hyatt without the sort of joint effort that the case involved."

That collaboration would not be possible today because of restrictions enacted by Congress and followed by the Legal Services Corporation. I do not think we have served the poor and the elderly by cutting off that kind of resource by saying that LSC cannot bring class action suits when indicated so that they cannot have their rights vindicated.

Some will even argue that we should further limit LSC's ability to do for their poor clients what every attorney does for paying clients, including Members of Congress who can get their rich friends—or the Administration—who can get their rich friends, to help with their legal bills when they get in trouble.

I also look forward to an intelligent discussion of the statistics controversy. With the independent General Accounting Office, the inspector general, the President of Legal Services Corporation, and some professional critics of legal services for the poor, we should be able to have a balanced discussion of this issue today, or at least I hope so.

Thank you, Mr. Chairman. I yield back.

Mr. GEKAS. The gentleman receives our thanks for his opening statement. We will now recess the hearing on Legal Services and we call the committee to order to complete the Fair Warning Act. [Whereupon, the subcommittee proceeded to other business.]

Mr. GEKAS. We have completed the work on the markup and we can now proceed with relaxed nerves, I trust, to the question at hand.

We again recognize Mr. Quatrevaux.

**STATEMENT OF EDOUARD R. QUATREVAUX, INSPECTOR
GENERAL, LEGAL SERVICES CORPORATION**

Mr. QUATREVAUX. Thank you, Mr. Chairman, members of the subcommittee, for the opportunity to report today on our audits of grantee case statistical reports.

The Inspector General Act of 1978 created offices of inspector general or OIGs at 12 Cabinet agencies. It gave IGs independent authorities for things such as personnel, procurement, and budget. It also gave independent control over audits and investigations, as well as independent reporting to Congress and the agency head.

President Reagan embraced the concept, and under his leadership the number of OIGs increased to 57. In fiscal year 1998, OIG activities recovered \$1.4 billion through investigations, questioned costs of \$3.5 billion, and identified \$16 billion in funds that could be put to better use.

The LSC OIG has the same missions as all OIGs—preventing and detecting fraud and abuse and promoting efficiency and effectiveness in agency operations.

The 1996 appropriation added overseeing the checking of compliance with restrictions through annual grantee audits conducted by public accounting firms.

The OIG at LSC has 14 staff, including five auditors, to oversee LSC and its 257 grantees.

I am especially glad to be here today because a recent article suggested that the OIG failed to report as required by the IG Act and implied that it was an attempt to affect the appropriation last summer.

The facts prove that this cannot be true, but, since testimony today will repeat it, I'll briefly address this before reviewing the audits.

Let me say at the outset that Congress needs accurate, reliable information, much better and more comprehensive information than it gets now.

Congress needs to be able to judge the return on its investment of taxpayer dollars in the Federal legal services program.

LSC management also needs comprehensive performance information, and its current information is incomplete.

Five GAO audits in 25 years found that LSC lacks sufficient information to evaluate the cost effectiveness of grantee performance. The finding is still valid and my primary reason for starting these audits.

Before reviewing the timing of the audits, I need to make a technical point. Chart 1 shows that open cases are not work load. Our audits covered both open and closed cases, and some accounts mistakenly lumped them together. Cases open on December 31st of

year one are usually closed in year two. If we count open cases in year one, we would double count them the next year when they were closed; therefore, open cases are not relevant to the discussion of case load levels as a basis of funding.

Now, open cases are important for different reason. If a case management system has significant errors, then it raises questions about the quality of case management, but open cases have nothing to do with appropriations.

Chart 2 depicts the process in the Comptroller General's government auditing standards, also known as the "Yellow Book." The IG Act requires OIGs to comply with these standards.

There are three phases: planning, field work, and reporting. Reporting is the longest, by far, of these phases because that's where quality control procedures take place. At best, this reporting phase takes 3 months, normally much longer. And an auditor should not report any results before this process is finished.

There is an exception in the "Yellow Book" for illegal acts, and I would add to that public safety and national security. But the "LSC Fact Book" doesn't rise to that level. It's not required by law and, in fact, was not even submitted to the Congress for the 5 years prior to 1997.

Here are the facts:

At northern Virginia—Chart 3—we found 559 excess closed cases, or 13 percent of the total reported. Our auditors were on site April 20 to May 28. This first audit covered not just case statistics, but also timekeeping. When we finished this audit, we eliminated the timekeeping portion so that we could focus on case statistics.

Then, at Gulf Coast and Wisconsin, audits found 2,015 and 377 closed cases, excess closed cases. Our auditors left Wisconsin on Friday, July 31st. On the following Monday and Tuesday the House debated and passed the amendment increasing LSC funding.

Even if we had skipped mandatory quality control procedures, we couldn't have reported much. Preliminary results were that three of 260 grantees may have overstated closed cases by 2,800 out of 1.4 million. That's two-tenths of 1 percent. Reporting then would have been wrong and would have risked OIG's professional reputation.

Now, these facts disprove the suggestion that the OIG delayed reporting to Congress. The suggestion offends common sense as well. These audits were entirely discretionary. We could have audited petty cash. And if the OIG didn't like the results, we could have stopped after the first audit.

Better yet, if OIG did not want to report such results, why did it begin these audits? There's no answer because the suggestion is ridiculous.

The OIG is proud of its work on case statistics audits. Our risk assessment identified the problem. Our audits documented details and prompted management action. Our audits were the basis for GAO's work, and our audits of the 1998 statistics produced more valuable information.

While all these audits were underway, OIG audit staff reviewed 468 grantee audit reports, managed 60 on-site reviews of the compliance checks by public accounting firms, and also contracted for and supervised the LSC annual financial audit.

I think the OIG audit staff deserves praise for its accomplishments, without which we would not even be here today.

Now, here's what the audits showed.

Chart 4 depicts the types of errors found in the first round of audits conducted in 1998. Two grantees, San Diego and Miami, were responsible for 91 percent of the overstated closed cases. San Diego reported 14,000 telephone calls where legal assistance was not provided. Miami reported another 15,000 such cases.

I want to pause to make clear that these errors should not diminish the value of telephone help lines in general. An OIG report in 1996 estimated that the number of people served could be quintupled through help lines, internet delivery of legal services, and Legal Services kiosks.

By next spring, domestic abuse victims in Orange County, California, will be able to file temporary restraining orders electronically directly from shelters.

These new technology-driven delivery vehicles are highly productive, and it is my hope that all LSC grantees will decide to adopt them.

Returning to the audits, the next-largest error we found were 4,700 cases not funded by LSC and which should not have been reported. The audits also found clerical errors in data entry to LSC, just under 2,000 cases that should have been closed in prior years, and about 1,000 duplicate cases.

There were a total of 41,000 excess closed cases among the 86,000 reported by these six grantees.

Let me turn now to our audits of the 1998 case statistical reports.

We issued four final reports plus two draft reports. The chart shows a range of numbers for North Texas because we do not yet have the grantee's comments.

Our auditors found no material errors at Boston, so the number will not change, regardless of the grantee's comments.

These results show a continued problem, although there has been improvement. In the first two audits, a single error accounted for most of the overstatement.

Monroe County partially funded a centralized intake operation and erroneously reported cases based on an allocation of funding.

In Philadelphia, a new director failed to delete rejected cases before printing a summary report from the case management system.

However, at Maryland the results shown are limited to the Baltimore office, because auditors were denied access to the information needed. They still found about 2,700 excess closed cases.

In Eastern Missouri, auditors estimated about 5,500 excess closed cases.

And, as stated earlier, at North Texas the number of excess cases is somewhere between zero and 3,964.

At Boston, again, auditors found that the report was accurate.

Overall, the largest source of errors was untimely closing. The 1998 audits found a new type of error—no client name. If there is no name, the case is unsupported and cannot be reported. There were about 17,000 excess closed cases out of 58,000 reported by these six grantees.

Before moving to conclusions and recommendations, I want to note that the audits found no indication of fraud, and also that the House Appropriations Committee has requested the OIG to assess the grantees' 1999 case data by July of 2000, and we plan a variety of actions to develop supporting information.

All but one audit concluded that grantees need better management controls and that grantee managers need to oversee preparation of these reports.

I think there are numerous causes for the deficiencies. Before 1998, LSC management did not emphasize these reports. Before 1998, LSC did not adequately analyze data. Before 1998, some guidance needed clarification. LSC management has taken these corrective actions, but they need to be maintained.

Also, grantee managers think that the current reports don't permit a full expression of the services they provide, and they're right. LSC management is attempting to design a broader, more comprehensive performance measurement system using the Results Act process.

However, to evaluate cost effectiveness, LSC must collect information on all services provided by grantees and all funding, regardless of source. And LSC should not aggregate varied services nor combine non-LSC and LSC-funded activities. And LSC needs to use the information for evaluation.

Grantees must be held accountable for the volume of services provided, as well as compliance with restrictions. The Results Act would provide an excellent framework to ensure success in this regard.

Last, some grantee responses to our draft audit reports were not constructive, and some clearly hostile. I believe this attitude is a legacy of the past and reflects, in part, the relatively limited means LSC has to deal with its grantees, which are less than other Federal grant agencies.

I believe Congress needs to reauthorize the Legal Services program; not to reaffirm it, because that has been done in annual appropriations for 19 years, but rather to conform the program to Congressional intent and to provide the leverage LSC management needs to improve program performance.

At a minimum, Congress needs to reauthorize in order to provide for an inspection unit to perform routine on-site inspections, and to encourage and reward efficient service delivery vehicles such as I described in Orange County, California.

Last, LSC management is attempting to resolve the access to information issue. If they are not successful, then OIG and management would need legislation to ensure access to records.

For these and other reasons, Congress needs to replace the 1977 act with one that will improve LSC management's ability to do the job Congress expects.

Mr. Chairman, I thank you for the opportunity to testify and your generosity with the time. I look forward to the questions when that is appropriate.

Mr. GEKAS. We thank the gentleman.

[The prepared statement of Mr. Quatrevaux follows:]

PREPARED STATEMENT OF EDOUARD R. QUATREVAUX, INSPECTOR GENERAL, LEGAL SERVICES CORPORATION

Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to report to you regarding the Office of Inspector General audits of LSC grantee Case Statistical Reports.

LSC OFFICE OF INSPECTOR GENERAL

The Inspector General Act of 1978 created Offices of Inspector General, or "OIGs," at 12 cabinet agencies. These OIGs are different from other federal organizations in that they are independent of the agencies for which they provide oversight. The law grants Inspectors General (IGs) independent authorities for personnel, procurement, and budget. Operationally, the law provides that IGs independently conduct audits and investigations, refer evidence of crimes to prosecutors, coordinate with other federal, state and local agencies, and report to Congress and to the agency head. The law gives IGs access to all agency documents and information, and the authority to issue subpoenas and to administer oaths.

President Reagan embraced the IG concept, and under his leadership the number of OIGs increased to 57. In fiscal year 1998, the OIGs recommended that \$15.8 billion in Federal funds be put to better use, questioned costs of \$3.5 billion, and recovered \$1.4 billion through investigations. In the same year, OIG actions led to almost 15,000 criminal prosecutions, 1,900 civil actions, 1,200 personnel actions, and 7,100 suspensions or debarments.

The LSC Office of Inspector General, like all federal OIGs, has the missions of preventing and detecting fraud and abuse, and promoting efficiency and effectiveness in the operations of LSC and its grantees. The LSC appropriation statute added the mission of overseeing the checking of grantee compliance with restrictions and prohibitions through a system of annual audits of grantees conducted by independent public accounting firms. The OIG has 14 staff, including five auditors, to provide oversight of LSC and its 257 grantees.

I am especially glad to be here today, so that I can provide the facts concerning our audits of Case Statistical Reports. Unfortunately, a well-known institution published an article suggesting that the OIG failed to report the results of its audits as required by the IG Act. It was implied that this alleged failure was a deliberate attempt to affect the appropriation under consideration in summer 1998. The facts prove the suggestion cannot be accurate. Because members of the Subcommittee may have read this article, I will briefly address this point.

INFORMATION NEEDS

Let me say at the outset that I think Congress should receive accurate, reliable information concerning the performance of LSC and its grantees—much better and much more comprehensive information than it now receives. Congress needs to be able to determine the return on its investment in the federal legal services program.

That is true for LSC management as well. They need comprehensive performance information from grantees, and the information currently collected is incomplete. In LSC's 25 years, five GAO audits have found that LSC did not have sufficient information with which to evaluate the cost-effectiveness of its grantees. The finding is still valid today, and that is the primary reason why I directed that these audits be conducted.

Before reviewing the timing of the audits that were conducted in 1998, I need to make a technical point.

OPEN CASES

Our audits covered both closed cases and open cases, and some media accounts have mistakenly lumped the two together. The first chart makes the point that open cases are not part of workload. Open cases are defined as those open on December 31st. Cases open at the end of Year 1 are usually closed in Year 2 because most cases involve brief services. If one counts the open cases in Year 1 as workload, and those cases are closed in Year 2, then those cases would be double-counted. Therefore, open cases are irrelevant to the discussion of caseload levels as a basis for funding.

We believe that open cases are important but for a different reason. If a grantee's case management system contains significant errors, then it raises questions as to how well that organization is managing its cases. Again, open cases are important, but simply not relevant to workload or funding.

GOVERNMENT AUDITS

The second chart depicts the process set forth in the Comptroller General's Government Auditing Standards. All OIGs are required to comply with those standards by the Inspector General Act, and every audit is required to have a statement to that effect. In the planning phase, objectives and methodology are set, evaluation criteria specified, information sources identified, and a plan prepared. When auditors go on-site, they conduct testing, gather evidence and begin to prepare the documentation required by Government Auditing Standards. Field work is usually the shortest phase.

The reporting phase is normally the longest phase, because quality control procedures take place in this phase. Auditors returning from the field present an analysis of the evidence they collected to their supervisor. They then organize their work papers and create detailed schedules on every matter expected to appear in the audit report.

Internal draft reports are then submitted to the audit chief until the draft is approved. The audit chief reviews those detailed work papers to ensure that every factual statement in the audit report is supported by documentary evidence. Next, a draft audit report is issued to the audited organization for comment. This is a very important quality control step in ensuring that the report is fair, complete, and balanced. Finally, those comments are evaluated, the report adjusted as appropriate, and a final report issued.

This is not a fast process, but it is mandatory for all audits performed by OIGs. We have a goal of issuing a draft report within 30 days of returning from the field. That goal is extremely ambitious and rarely achieved. We normally give auditees 30 days for comments, and aim to issue a final audit report within 30 days of receiving those comments. At best, this process takes three months. Normally it takes much longer to complete.

Until these quality control procedures are completed, auditors should not report results, because the audit is unfinished and any "results" are preliminary. An exception is permitted by Government Auditing Standards when the audit uncovers evidence of illegal acts. I would add to that exceptions for public safety and national security.

However, the LSC Fact Book, which contained the caseload numbers, hardly rises to this level. It is not required by statute, and I am told that it was not even sent to Congress for the five years between 1992 through 1996.

Here are the facts. Chart 3 shows when OIG auditors were on-site in 1998. Auditors were on-site at Northern Virginia April 20th-May 28th. The original audit plan covered both case statistics and timekeeping. After completion of the Northern Virginia audit, we decided to focus future audits on case statistics and eliminated the timekeeping component.

OIG auditors found 559 excess closed cases reported, which was 13 percent of the total reported by the grantee. The audit report was issued five months later. Then OIG auditors went to the Gulf Coast and Wisconsin grantees in June and July, and found reported closed cases to be overstated by 23 percent and 6 percent, respectively.

The House considered an amendment increasing the LSC appropriation by \$109 million on August 3rd and 4th. Even if we thought the results of these first 3 audits demonstrated a significant systemic problem, which we did not, and we completely skipped mandatory audit procedures, we could not have reported these before the House debate. Our auditors traveled back from Wisconsin on Friday, July 31st. The House deliberations took place on the following Monday and Tuesday.

At that time, preliminary results indicated that three of the 260 LSC grantees may have overstated closed cases by 2,800 cases out of 1.4 million reported, or two tenths of one percent. We could not have provided any assurance that the number was accurate because we had not performed our quality control procedures. To report to Congress on that basis would have been irresponsible, and would have risked the OIG's professional reputation.

The suggestion that the OIG delayed reporting to Congress is refuted by these facts.

The suggestion offends common sense as well as the facts. These audits were 100 percent discretionary. We could have audited petty cash. We did not have to do these audits—we chose to do them. If we did not want to report such results, we could have stopped after the first or second audit. If the Office of Inspector General did not want to report the results of these audits to Congress, why did it begin them? There are no answers to these questions because the suggestion is untrue and not credible.

The LSC Office of Inspector General is proud of its work on the Case Statistical Audits. The OIG risk assessment identified the problem, and OIG audits produced the detailed documentation of the problem that prompted the start of corrective action. GAO's work was based on the OIG audits and echoed those findings. Since then, OIG audits of the 1998 statistical reports have produced additional valuable information.

While these audits were underway, the OIG audit staff also reviewed 468 grantee audit reports prepared by independent public accountants, and managed 60 audit service reviews of those independent accountants' work papers to determine if their compliance checking was adequate. OIG audit staff also supervised the conduct of the LSC annual financial audit. I think the LSC OIG audit staff should be commended for these accomplishments.

AUDITS OF 1997 CASE STATISTICAL AUDITS

Chart 4 depicts the results of our audits of the 1997 Case Statistical Reports. Two of the grantees audited, San Diego and Miami, were responsible for 91 percent of the 41,000 overstated closed cases.

The audit of the San Diego grantee disclosed that 14,398 telephone calls had been reported as closed cases even though legal services had not been provided. The Miami audit revealed that 15,160 telephone calls and visits had been reported as closed cases although no legal services had been provided. These cases were reported in a category termed "referred after legal assessment."

These deficiencies should not diminish the value of legal helplines as a highly efficient way to provide legal services. The OIG's 1996 report entitled *"Increasing Legal Services Delivery Through Information Technology,"* estimated that LSC grantees could quintuple the number of people receiving legal services through helplines, Internet-based legal services, and the use of multimedia kiosks.

By next Spring in Orange County California, domestic abuse victims will be able to file petitions for temporary restraining orders directly from a legal services kiosk in a shelter. Just as businesses minimize staff costs through customer self-service, so can legal services grantees by assisting pro se representation wherever it is practical. The telephone helplines, the Internet, and kiosks are all highly efficient legal services delivery vehicles.

The next largest reporting error concerned 4,700 cases that the San Diego grantee had reported as closed. LSC required that reported cases be funded, at least in part, by LSC funds and we determined that these cases were funded by other sources.

The San Diego audit also revealed a problem with input to the LSC reporting system. The grantee printed a report from its automated case management system, and then manually entered the data into the automated LSC system. Although some of the entry errors understated the number of closed cases, the net result was an overstatement of 2,692 closed cases. We also saw some counting problems in Northern Virginia that occurred because the grantee's branch offices were not electronically linked to the main office.

The audits revealed about 2,000 instances where the cases reported as closed in 1997 should have been closed and reported in previous years, because legal services had ceased before 1997.

The audits also disclosed 969 duplicate cases, i.e., instances where there were multiple cases for the same client. The remaining errors were of various types.

AUDITS OF 1998 CASE STATISTICAL REPORTS

The final chart depicts the results of this year's audits of the 1998 Case Statistical Reports. Four final reports have been issued, and draft reports for the audits of North Texas and Boston have been issued to the grantees for comment.

The results are shown as a range for North Texas, because we are awaiting its comments on our draft report. Although the report of the Boston grantee is still in draft, auditors found no material errors. Therefore, the number will not change.

As you can see, the results show continued problems with the Case Statistical Reports submitted. Although an improvement over the results of last year's audits of the 1997 data, overstatements averaged 29 percent for the 1998 data audited by the OIG.

The first two audits found that a single error accounted for most of the overstatement. In Monroe County, the grantee partially funded a centralized telephone intake and referral service. The grantee erroneously reported 1,410 unspecified cases based solely on an allocation of the funding. The grantee did not provide direct services to any of the clients. In Philadelphia, a new director failed to delete cases coded as "rejected" before printing a summary report from the case management system,

and 1,072 cases were mistakenly reported. Absent these two errors, both case statistical reports would have been much closer to accurate.

The Maryland results are limited to the Baltimore office because the grantee denied OIG auditors access to the information we needed to complete the audit. Auditors found an estimated 2,696 excess cases reported, almost all relating to untimely case closings.

The audit of the Eastern Missouri grantee disclosed an estimated 5,478 overstatement in closed cases, consisting of duplicate cases, cases where no legal services were provided, and cases with no identified client.

The largest source of errors found by this year's audits was untimely closing, i.e., the cases should have been reported in prior years because all activity had ceased prior to 1998.

The audits of two grantees disclosed a new type of error—no client name. Various reasons were given why the client name had not been obtained. Our view is that if a client name is not documented in the case management system, the case is unsupported and cannot be reported to LSC. LSC management agreed that a client name is necessary to report a case.

The audits found 2,576 cases for which no legal services had been provided, most of which resulted from the allocation error at Monroe County. Duplicate cases, the previously-mentioned inclusion of rejected cases, and a variety of other error types accounted for the remaining excess cases.

Before moving on to Conclusions and Recommendations, I want to note that we found no indication of fraud in the course of our work. Also, the House Appropriations Committee has requested that the OIG provide an assessment, by July 2000, of the accuracy of the grantees' 1999 case data. We plan a variety of actions that would develop the information needed for that assessment.

CONCLUSIONS AND RECOMMENDATIONS

Almost every audit concluded that the grantee needed to establish better management controls over the case management system, and that grantee managers needed to oversee the preparation of the report to LSC.

I believe this outcome has a number of causes. Prior to 1998, LSC management did not emphasize the importance of these reports. Prior to 1998, LSC did not adequately analyze the data received, which would have revealed some anomalies. Prior to the 1998 revision of the Case Statistical Report Handbook, some guidance needed clarification. LSC management has taken corrective actions in these areas but those actions need to be maintained.

Some grantee managers did not believe that the current report permits a full expression of the services they provided, and may have reported other services despite LSC guidance. LSC management is attempting to design a broader, more comprehensive measurement system, which is important for another reason.

As GAO has reported five times in 25 years, LSC does not have sufficient information to evaluate grantee cost-effectiveness. *To evaluate grantee cost-effectiveness, LSC must collect information on all services provided by a grantee and all funding received regardless of source.* These services vary widely in effort and cost, and should not be aggregated into one number. Nor should non-LSC funded activities be combined with LSC-funded services. Most important, LSC management must really use this information for evaluation. By this I mean that grantees must be held accountable for the volume of services provided, as well as compliance with restrictions. The Results Act would provide an excellent framework to ensure success.

Last, some grantee responses to OIG audit reports have not been constructive, and some were clearly hostile and thus inappropriate. I believe this attitude is a legacy of the past, and reflects in part the relatively limited means LSC has to deal with its grantees. The LSC Act, continued for 19 years through appropriations acts, gives LSC far less leverage with its grantees than most federal grant agencies.

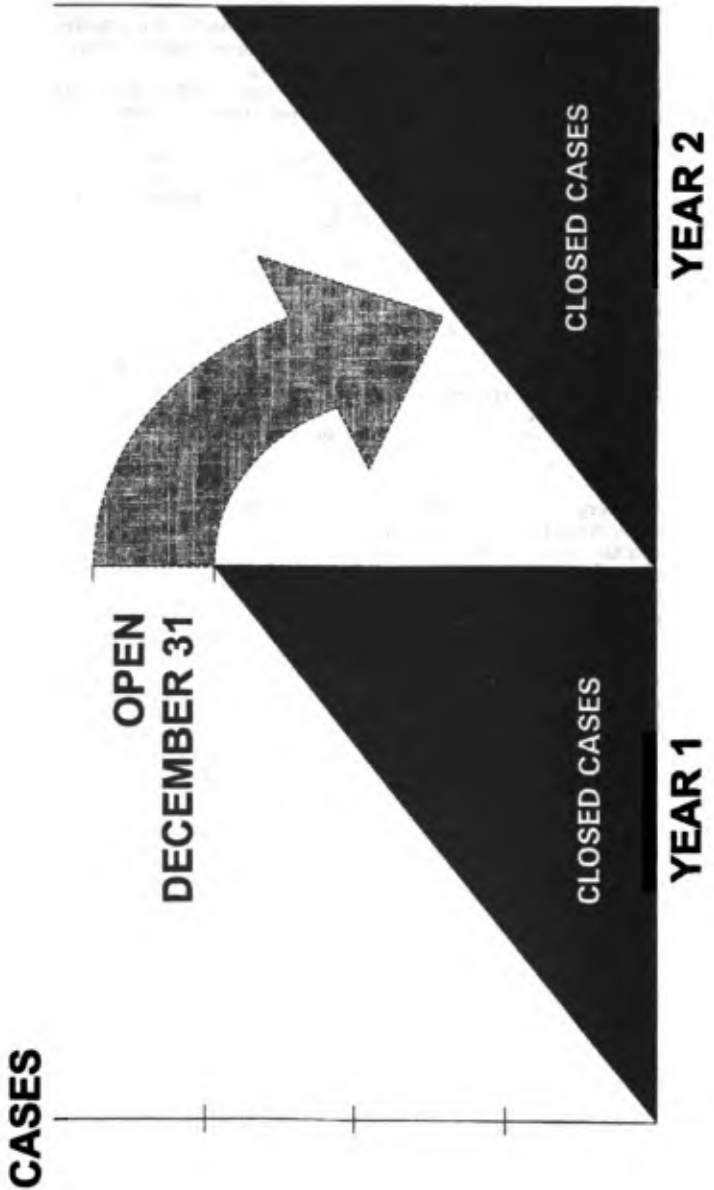
Congress needs to reauthorize the federal legal services program, not to reaffirm it, for Congress has done that in its appropriations. Congress needs to reauthorize the legal services program in order to conform the program to Congressional intent, to recognize the lessons learned over the years, and to provide the leverage that LSC management needs to improve program performance. At a minimum, Congress needs to reauthorize to provide for an inspection unit to conduct on-site inspections on a routine basis, and to encourage and reward new and highly efficient service delivery mechanisms such as that I described in Orange County, California.

Last, LSC management is attempting to resolve the access issue encountered in Baltimore, as it did last summer in San Diego. If the effort is not successful, then the OIG and LSC management would need legislation to ensure access to the records needed to perform our respective duties.

For these and other reasons, Congress needs to replace the 1977 LSC Act with one that will improve LSC management's ability to do the job Congress expects.

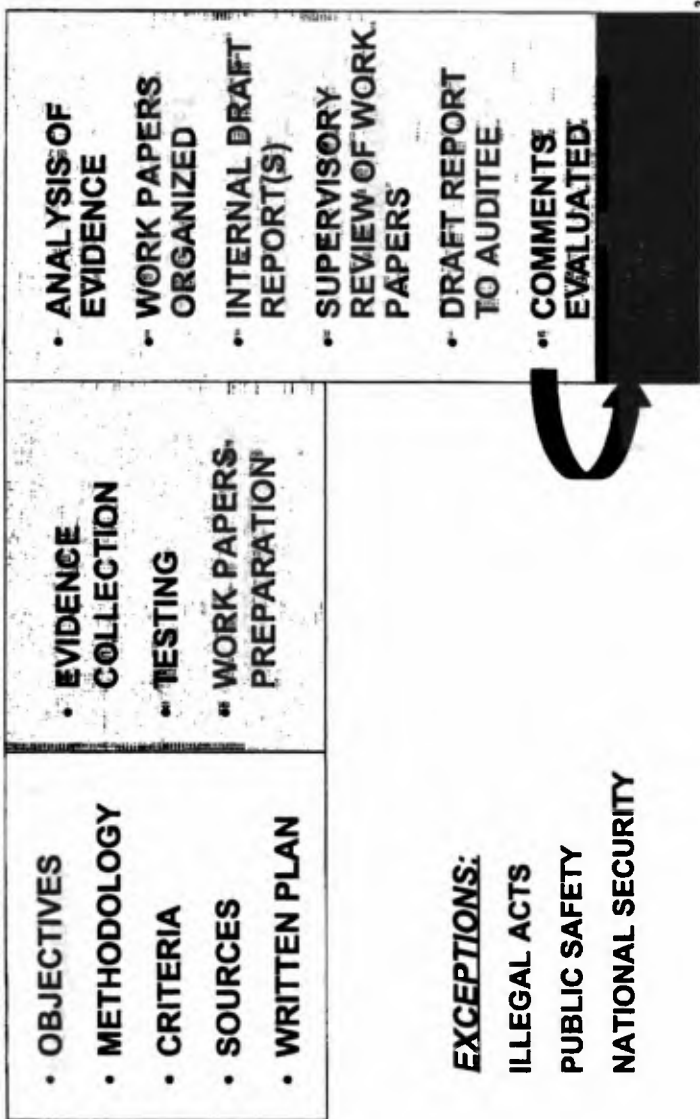
Thank you for giving me the opportunity to comment in detail. I look forward to your questions.

Open Cases Not Workload



Government Audit Standards

PLANNING → FIELD WORK → REPORTING



OIG Audits

1997 Case Statistical Reports

GRANTEE	OVERSTATED CASES	%	FIELD WORK
Northern Virginia Gulf Coast (TX) Wisconsin	559 2,015 377	13 23 6	April 20 - May 28 June 15 - 26 July 20 - 30
HOUSE DEBATES AND PASSES INCREASE TO LSC FUNDING AUGUST 3-4			
San Diego	22,025	68	August 10 - 21 October 13 - 22
Prairie State (IL)	752	6	October 5 - 9 Oct 25 - Nov 6
Miami	15,544	76	November 9 - 24

OIG Audits

1997 Case Statistical Reports

ERROR TYPES
NO LEGAL SERVICES 30,053
NOT LSC FUNDS 4,700
CLERICAL ERROR 2,692
UNTIMELY CLOSING 1,959
DUPLICATES 969
OTHER 999

GRANTEE	OVERSTATED CASES	%
Northern Virginia	559	13
Gulf Coast (TX)	2,015	23
Wisconsin	377	6
San Diego	22,025	68
Prairie State (IL)	752	6
Miami	15,544	76
Total	<u>41,272</u>	

OIG Audits 1998 Case Statistical Reports

GRANTEE	OVERSTATED		%	ERROR TYPES
	CASES			
MONROE COUNTY (NY)	2,580		39	UNTIMELY CLOSING 5,620
PHILADELPHIA	2,099		24	NO CLIENT NAME 5,169
MARYLAND	2,696		43	NO LEGAL SERVICES 2,576
EASTERN MISSOURI	5,478		37	DUPLICATES 1,584
NORTH TEXAS	0-3,964		0-34	REJECTED 1,479
BOSTON	0		0	OTHERS 389
TOTAL	16,817			

Mr. GEKAS. We turn to Dr. Ekstrand.

STATEMENT OF LAURIE EKSTRAND, DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, UNITED STATES GENERAL ACCOUNTING OFFICE

Ms. EKSTRAND. Thank you.

Mr. Chairman and members of the committee, as you know, during the past year the General Accounting Office has reported on misreporting by LSC grantees of both the number of cases they closed during calendar year 1997 and the number of cases reported open at the end of the year.

Specifically, in our June, 1999 report, we estimated that nearly 75,000 of approximately 221,000 cases reported to LSC by five of its largest grantees were questionable.

In light of these findings, we were asked to continue our work to answer two more questions.

First, what efforts have LSC and its grantees made to correct case reporting problems?

Second, to what extent are these efforts likely to resolve the case reporting problems that occurred in 1997?

Our September 20, 1999 report provided the responses to these questions.

In relation to the first question, we found that LSC had issued a new 1999 CSR handbook and other written communication to clarify reporting requirements to its grantees. The handbook includes changes to reporting requirements dealing with timely closing of cases, management review of case service reports, and for ensuring single reporting of cases. It also includes requirements to report LSC-eligible cases, regardless of funding source, and to report cases involving private attorneys separately.

The first two of these requirements—that is, procedures for timely closing of cases and for management review of case service reports—were to apply to grantees' 1998 data, as well as data in 1999 and thereafter.

In responding to a GAO telephone survey of 79 program executive directors, most grantees said that the new guidance helped clarify reporting requirements, and virtually all of them indicated that they planned or had made program changes as a result of the requirements.

Many grantees, however, identified areas of case reporting that remained unclear to them. Requirements concerning asset and citizenship/alien eligibility documentation, single reporting of cases, and who can provide legal services to have it count as a case were noted as areas of continuing uncertainty.

As an additional effort to improve the accuracy of CSR data, LSC required grantees to complete a self-inspection of its open and closed caseload data for 1998. Each grantee was to select and test random samples of open and closed cases to determine whether their already-reported 1998 caseload statistics were correct.

Among a sizeable list of case file attributes that were to be checked were eligibility information on household income, assets, citizen attestation for in-person cases, and indication of citizenship/alien status for telephone-only cases.

Grantees could certify their data as being substantially correct if errors were found in no more than 5 percent of their cases.

A total of 199 grantees, or 76 percent of all grantees, certified their data. The remaining 62 grantees did not.

According to LSC, 26 of the 50 largest grantees did not certify their 1998 data. On the basis of the self-inspection results, LSC estimated that grantees closed 1.1 million cases in 1998.

Our review raised concerns about LSC's interpretation of self-inspection results and about the accuracy of the data provided to LSC by the grantees.

First, because LSC did not have a standard protocol for grantees to use to report results, grantee information was subject to LSC interpretation of data problems.

Second, we were not sure that LSC had applied a consistent definition of "certification."

Third, given LSC's instructions to grantees on how to conduct the self inspections, some smaller grantees may have selected too few test cases from which to assess the accuracy of their data.

And, finally, LSC did not know how well grantees conducted the self-inspections.

We spoke with several executive directors who did not correctly follow LSC's guidance. This may have resulted in some grantees certifying their data when they should not have done so and others not certifying when they should have.

As a result of these findings, we concluded that LSC's actions to date have not been sufficient to fully resolve the case reporting problems that occurred in 1997. We made numerous recommendations, four directed at clarifying specific reporting requirements, one about disseminating information concerning reporting requirements, and three intended to enhance the quality of any future self inspection efforts.

This concludes my oral statement and we would be happy to answer any questions you would have.

Mr. GEKAS. Yes. I thank you, Dr. Ekstrand.

[The prepared statement of Ms. Ekstrand can be found on the United States General Accounting Office website (www.gao.gov). A hard copy of the statement may be ordered from the GAO (Report number GAO/T-GGD-99-185).]

Mr. GEKAS. It is my understanding that Ms. Montgomery and Dr. Rezmovic will be monitoring the remainder of the questions; is that correct?

Ms. REZMOVIC. Yes.

Mr. GEKAS. The Chair will yield itself 5 minutes for the first round of questions.

Mr. Quatrevaux, you stated some place in your report that—well, let me ask you this question. Did you file, in September 1998, a report, the semi-annual report to Congress for the period ending September, 1998?

Mr. QUATREVAUX. That's correct.

Mr. GEKAS. And there, under the category of "significant problems, abuses, and deficiency," did you indicate none?

Mr. QUATREVAUX. That's correct, Mr. Chairman. The reason for that—

Mr. GEKAS. Yes?

Mr. QUATREVAUX [continuing]. Is because in September, as we can see on the chart, the information available to us was only from the first three audits and we hadn't finished the quality control procedures.

We had made one trip out to San Diego, where there was evidence of problems, but the quality control hadn't been done, it hadn't been documented, the evidence wasn't there, and we knew we had to go back in October.

But at that time I couldn't provide you any assurance of what the numbers were at San Diego, and San Diego was the first time that we encountered any kind of massive over-reporting.

Mr. GEKAS. But then this is really the first time that you have entered a report showing these over-countings, just in the last several months; is that correct?

Mr. QUATREVAUX. That's correct, Mr. Chairman.

Mr. GEKAS. But, according to everything else we have in 1997 and 1998 and you reported none, what fell through the cracks that you could not have detected in 1998?

Mr. QUATREVAUX. Well, I think you're talking about the semi-annual report—

Mr. GEKAS. Yes.

Mr. QUATREVAUX [continuing]. For the period that ends September, 1998.

Mr. GEKAS. Yes.

Mr. QUATREVAUX. Okay. At that time, in September 1998, we had completed field work only for the first three audits.

Mr. GEKAS. Wasn't there any over-reporting there?

Mr. QUATREVAUX. There was, but—

Mr. GEKAS. Or reporting problems?

Mr. QUATREVAUX. But, as I indicated, the preliminary results were very small. There was nothing—

Mr. GEKAS. Then you consider the answer "none" to be adequate there?

Mr. QUATREVAUX. I do, because I—we have to report to the Congress based on evidence, and we didn't have evidence there of any kind of big problem.

Mr. GEKAS. You stated with some defensiveness, I must note, that when we were proceeding with the debate in this past summer on the floor that aspersions were cast that the report—your reporting or your work wasn't done purposely in order to affect the level of funding.

By that time, what had you done in the summer of 1999?

Mr. QUATREVAUX. By the summer of 1999, we had issued reports for northern Virginia, we accelerated the issuance of the reports for San Diego and Miami, because they had a more significant impact on the total numbers, and we delayed some of the other work as a consequence.

Mr. GEKAS. So at that time there was a significant—even in just those few areas—serious over-counting.

Mr. QUATREVAUX. Not in September 1998. No.

Mr. GEKAS. No, no. I'm talking about in the summer of 1999.

Mr. QUATREVAUX. Summer of 1999? Yes, that's correct, and those reports—the San Diego and Miami reports were issued in March 1999. And in February 1999 I briefed the Appropriations Sub-

committee staff, as I do every February, running over all the work the OIG was doing. I briefed them on these audits and told them that two of the audits were showing serious overstatements.

Mr. GEKAS. When you reported that to LSC, did you have any concomitant responsibility, do you feel, to report that lament to Congress?

Mr. QUATREVAUX. We provided all those reports to Congress and actually provided them much more rapidly than we normally would. We normally give the LSC management and the board some time to review these reports before making them public. But, once the March 3rd appropriation hearing happened and these charges were made, I decided that we'll just send the reports immediately, which is not normal practice.

Mr. GEKAS. The time of the Chair has expired.

I recognize the gentleman from New York, Mr. Nadler.

Mr. NADLER. Let me just ask, to reemphasize the point, both of Mr. Quatrevaux and Dr. Ekstrand, in your work did either of you find any evidence of fraud or intentional misrepresentation, Mr. Quatrevaux?

Mr. QUATREVAUX. No.

Mr. NADLER. Thank you.

Dr. Ekstrand?

Ms. EKSTRAND. No.

Mr. NADLER. Thank you. So the answer is no in both cases.

Now, to continue to what the—and that's very important, because the Heritage Foundation made some rather irresponsible charges, and I just wanted to get you both on the record—but then, again, they're always irresponsible.

Now, there have been many allegations that LSC was aware of an over-count but withheld that information from the Congress until after the funding bill passed. You just addressed the issue of timing from the Chair's questions.

Mr. Quatrevaux, if you had issued a report to Congress based on your preliminary findings without a chance to go through your normal quality control, would that have been pursuant to normal audit procedures, or would that have been regarded by the standards of the audit profession as irresponsible?

Mr. QUATREVAUX. I believe it would have been regarded as a violation of those standards.

Mr. NADLER. As a violation of those standards.

Would it have been a violation of law?

Mr. QUATREVAUX. I'm not sure.

Mr. NADLER. Okay. But certainly of normal auditing standards?

Mr. QUATREVAUX. Yes.

Mr. NADLER. So anyone who alleges any plot to influence Congress by failure to release that information at that time, to put it charitably, does not understand auditing standards, correct?

Mr. QUATREVAUX. That's my belief.

Mr. NADLER. Thank you.

Let me ask one other question for the GAO. Some people have said the Legal Services Corporation can't count, and making a broad generalization about some of these reporting problems. Do you think that's the problem, or are the accounting errors, in your

opinion, of a more technical nature such as how certain types of cases or certain phases of cases ought to be counted?

Ms. EKSTRAND. I think the types of errors varied widely. They were several different types of errors. Some of them strictly related to changes in computer systems that caused glitches in reopening closed cases. Others were because of confusion as to exactly what should count as a case.

They are so varied, they are hard to categorize as one particular thing or another.

Mr. NADLER. Yes. But you saw no systematic attempt, or did you see any systematic—what could be interpreted or perhaps could be a systematic attempt to misreport with some goal in mind? Some allegations have been made.

In other words, does the nature of the errors lead to a suspicion that someone was trying to deliberately over-report or deliberately under-report, or were these all over the lot?

Ms. EKSTRAND. Well, there was more over-reporting. It was only over-reporting that we were looking at. We were not looking in our audits under-reporting of cases.

Mr. NADLER. Wait a minute. So there may have been under-reporting that you didn't note?

Ms. EKSTRAND. It's possible that there was under-reporting that we did not detect in the kind of audit that we conducted.

Mr. NADLER. And it's even possible, then, that if they weren't reporting properly, it is possible, given the information we have now, since you only looked at over-reporting, it is possible that there was a net under-report but you don't know that?

Ms. EKSTRAND. It's in the realm of possibility.

Mr. NADLER. Thank you. Yes. So, in other words, you only looked the one side; therefore, you only saw whatever was on that side because you weren't interested in the other side, for perfectly legitimate reasons. But you can't assume from that, therefore, that the predominance was over-reporting. We just don't know. Is that correct?

Ms. EKSTRAND. We just don't know.

Mr. NADLER. Thank you.

Thank you very much. I yield back.

Mr. GEKAS. The gentleman yields back the balance of his time.

Let the record indicate that the gentleman from Ohio has been present during the course of these proceedings, and we now recognize him for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

Sir, the Legal Services Corporation provides Congress with annual case statistics in the budget request and performance plan and fact book. The Congress relies on this information in making judgments on how much to appropriate to the Legal Services Corporation, as you know. Therefore, the case statistical information is, obviously, very important.

Have you and do you have scheduled a formal audit plan to evaluate the controls that the Legal Services Corporation has in place at its headquarters to ensure the accuracy of the case information provided to the Congress?

Mr. QUATREVAUX. We have not examined LSC internal processes. We have been focusing on the grantee data and the accuracy of it.

Our plan for the 1999 data is to do a lot of work here in Washington in terms of reviewing supporting information and to also make quite a few very brief on-site inspections to try to develop the information to determine how good the 1999 data is.

Mr. CHABOT. Now, back on December 7th of 1998, last year, you asked the Legal Services Corporation board chairman to discuss the serious case reporting problems identified by your auditors at some programs while making a presentation before the National Legal Aid and Defenders Association. You have a dual reporting responsibility to the Congress to keep the Congress fully and currently informed. Explain why you decided that it was proper for the corporation to address the issue with this body that I just referred to and not the Congress of the United States at the same time.

Mr. QUATREVAUX. I am not aware of the event to which you are referring, Congressman. December 7, 1998?

Mr. CHABOT. That's the information that we have.

Mr. QUATREVAUX. I'm sorry. I just—I'll be happy to review it and submit an answer for the record, sir.

Mr. CHABOT. All right. We'll follow up on it. We can talk to your people?

Mr. GEKAS. Would the gentleman yield?

Mr. CHABOT. I would be happy to yield.

Mr. GEKAS. Based on the question, we would request Mr. Quatrevaux to research that event and to submit to the members of the committee your report on that function, if such function did occur.

Mr. CHABOT. I thank the chairman.

[The information referred to follows:]

LEGAL SERVICES CORPORATION,
OFFICE OF INSPECTOR GENERAL,
Washington, DC, October 20, 1999.

Hon. GEORGE W. GEKAS, *Chairman,*
Subcommittee on Commercial and Administrative Law,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to your request, I am reporting concerning an event cited in a question by a member at the September 29, 1999 oversight hearing on the Legal Services Corporation.

The Inspector General was asked the following question:

[B]ack on December 7th of 1998, last year, you asked the Legal Services Corporation board chairman to discuss the serious case reporting problems identified by your auditors at some programs while making a presentation before the National Legal Aid and Defenders Association. You have a dual reporting responsibility to the Congress to keep the Congress fully and currently informed. Explain why you decided that it was proper for the corporation to address the issue with this body that I just referred to and not the Congress of the United States at the same time.

The question refers to an e-mail to the LSC Board Chair, in which the Inspector General stated the following:

I would also appreciate, to the degree your theme can accept, a mention of the need to improve the accuracy of case statistics submitted to LSC. The Performance Plan for FY 1999 included a set of performance measures, including one to "resolve 1.6 million cases for low income people."

OIG audits have disclosed serious overstatement of closed cases in some programs. Although several problem sources have been identified, the largest one is the tendency to use the category "referred after legal assessment" when it is not warranted, e.g., to report on telephone contacts. The IG believes that the

attention of Executive Directors to these reports would do much to improve the accuracy and reliability of their submissions.

The Inspector General Act charges IGs with the prevention as well as the detection of irregularities. Most if not all LSC grantees are members of the National Legal Aid and Defender Association (NLADA), and the annual conference of this group provides a useful forum to reach the target audience—LSC grantee managers. In a proactive manner, many IGs attend meetings of and communicate with representative groups relevant to their agencies. The Inspector General of the Department of Health and Human Services, for example, has met with various elements of the health care industry in an attempt to reduce Medicare fraud. These contacts and communications are entirely appropriate.

However, the principal issue raised is whether the Office of Inspector General should have provided the information cited to the NLADA, but not to the Congress. First, the information provided was general in nature. The audits disclosed that *some* grantees had serious overstatements of closed cases. Using preliminary information as a basis for admonishing grantees to give closer attention to their case service reports is quite different than using preliminary information as a basis for reporting to Congress. Such a report would not have been appropriate under Government Auditing Standards, nor would it have provided information on which the Congress could act or rely.

Second, the email was sent because the imminent, annual conference of the group presented an opportunity to try to improve the quality of the data submitted, and because the IG had just learned the previous week of the *preliminary results* of the Miami grantee audit. At the time of the Inspector General's request to the Board Chair, the OIG had just completed field work in Miami, which, as the attached chart show, had the greatest percentage of overstated cases of all the 1997 audits. The Miami grantee was one of the two grantees responsible for 91 percent of the overstated cases disclosed by the audits of 1997 Case Statistical Reporting.

The OIG auditors completed field work on Tuesday, November 24th, traveled to Washington on the Wednesday before the four-day Thanksgiving weekend, and returned to the office on Monday, November 30th. The IG was likely briefed in the December 1-4 period before sending the email on Monday, December 7, 1998. Again, this was *preliminary information*, and the OIG was in the process of analyzing the evidence obtained in order to complete the reporting phase of the audits which, as described more fully in the Inspector General's testimony, is normally the longest phase of auditing, involving important quality control procedures.

For these reasons, the information provided in the December 7th e-mail to the Board Chair was extremely general in nature. It amounted to nothing more than a request to urge grantee directors to pay closer attention to the case service reports, giving particular attention to one problem area, "referred after legal assessment," that the OIG then believed was a major cause of case counting errors.

As to reporting this information to Congress, especially in the context of its relationship to the fiscal 1999 appropriation, the relevant dates are important. By December 1998, LSC appropriations for fiscal year 1999 had long been decided, and the focus had shifted to the fiscal year 2000 appropriation. Two months later, after the OIG had validated the preliminary information reported by the auditors, the Inspector General met with staff of the House and Senate Appropriations Committees *in advance of the appropriations hearing*. In the course of his annual briefing to appropriations committee staff, the Inspector General fully described the results of these audits, including notice that two audits had revealed large overstatements of closed cases.

Inspectors General obtain, analyze, and report information for which they can provide assurance of its accuracy and reliability. The extensive validation procedures embedded in the Government Auditing Standards, with which IGs are required by law to comply, exist for this sole purpose. IGs should not report information that has not been validated as these standards require. The LSC OIG is committed to providing Congress and the LSC Board of Directors with timely information, however, it cannot violate statutorily required standards to do so.

Last, the timing of these audits was based on the timetable set forth in the Results Act, which correctly anticipated that government agencies would have difficulty both in establishing performance measures and in collecting accurate and reliable performance data. The Results Act requires the first Performance Reports to be submitted in 2000, covering fiscal year 1999. The OIG decided to audit 1997 data in 1998 in order to provide early identification of any problems, and to provide an opportunity for LSC management to correct them prior to the first submission of reports under the Results Act. I believe this decision was forward-looking, embodied the spirit of the IG Act and the Results Act, and was entirely appropriate.

I thank you for the opportunity to add to the record. As you requested, I am providing this report to each member of the Committee. Please contact me if I can provide additional information or assistance.

Sincerely,

E. R. QUATREVAUX, *Inspector General.*

Cc: Members of the Committee on the Judiciary

Attachment

OIG Audits 1997 Case Statistical Reports

Northern Virginia Gulf Coast (TX) Wisconsin	559 2,015 377	13 23 6	April 20 - May 28 June 15 - 26 July 20 - 30
San Diego	22,025	68	August 10 - 21 October 13 - 22
Prairie State (IL)	752	6	October 5 - 9 Oct 25 - Nov 6
Miami	15,544	76	November 9 - 24

Mr. CHABOT. My next question: in response to a question posed to the Government Reform and Oversight staff, you stated that the case reporting problems were not grantee-wide or program-wide, and the problems were basically limited to a category of case closure called "referred after legal assessment."

Is it true that every program audited by your staff or reviewed by the Legal Services Corporation since April 1998 had overstated case report figures? And isn't it also true that "referred after legal assessment" is only a symptom of a problem, and the primary reason for invalidating about 30,000 cases in the San Diego and Miami programs was because they did not fully determine eligibility as required by law and regulation?

Mr. QUATREVAUX. There are several questions there. I'm not sure of the date of that communication. When we finished the first round of audits we did believe, indeed, if you look at the numbers, no legal services—almost 30,000 out of 41,000. It certainly gave the appearances that that was the bulk of the problem.

We have since found new kinds of problems, and so no, I no longer believe that. I did, in fact, believe that the problem was probably just in that category.

We have since found all sorts of things that are systemic, but we also have one grantee that passed muster in its report.

But there is a difference between what we thought after we finished the 1998 reports and what we think now. We've learned a lot more.

Mr. CHABOT. Congress certainly does look at the statistics that we are provided, and we expect those statistics to be accurate when we are determining what programs are going to be funded and at what levels, so we expect those numbers to be accurate, and when they're not it disturbs us a great deal, as it should.

I yield back the balance of my time.

Mr. QUATREVAUX. I agree with you, Congressman.

Mr. GEKAS. The gentleman yields back the balance of his time. The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I just wanted to clarify one thing, and I'll yield back.

The two areas—San Diego and Miami—that have substantially overstated cases, I'm assuming that, since 30,000 of those error types were no legal services provided, that a substantial part of those two would have been in that category?

Mr. QUATREVAUX. That's correct, 15,000 in Miami and 14,000 in San Diego. These were telephone calls where no legal services had been provided, which is—

Mr. WATT. And so what essentially was happening was somebody called the Legal Services agency and asked something and that got reported as a case?

Mr. QUATREVAUX. They called and they were referred to another organization.

Mr. WATT. And they reported that—

Mr. QUATREVAUX. Correct.

Mr. WATT [continuing]. Call as a case?

Mr. QUATREVAUX. Correct, and LSC guidelines require, for anything to be counted and reported, that there, indeed, be legal assessment prior to that referral.

Mr. NADLER. Would the gentleman yield for a moment?

Mr. WATT. I'm happy to yield. Yes.

Mr. NADLER. Thank you.

Just on that point, someone calls a help line operator by a grantee and says, "I have this legal problem. What should I do?" and the attorney on the help line says, "What you should do is X, Y, and Z," and gives them advice, is that counted as a case properly or how is that counted?

Mr. QUATREVAUX. Yes, it is. It is proper.

Mr. NADLER. Thank you.

Mr. WATT. Can you discuss—or maybe your analysis is solely statistical, not a discussion with the people who are doing this—did you make any determination of whether there was any ulterior motive or what the circumstances were under which that kind of error would have been made in those two particular cases? There clearly, I would assume, had to be a pattern of treating this that way to get that kind of an over-count.

Did you make any assessment of whether there was simply a policy of treating it that way in their accounting or whether there was any benefit to be gained by the agency?

Mr. QUATREVAUX. We saw no motive. We did hear from the executive director of the Miami grantee program that she—her argument was that she had formed an intake unit composed of non-legal personnel, and that she believed that the work of this unit contributed to the effectiveness of the legal services that were provided and therefore should be reported, despite the guidance.

Mr. WATT. Okay. All right.

I have no further questions. Mr. Chairman.

Mr. GEKAS. The gentleman yields back the balance of his time.

The Chair recognizes the gentleman from Massachusetts, Mr. Delahunt, for 5 minutes.

Mr. DELAHUNT. You know, let me—I'll pose this question to both Dr. Ekstrand and the inspector general. From what I'm hearing, what we're really talking about here are problems with management systems.

Ms. EKSTRAND. I think that—

Mr. DELAHUNT. I mean, I think it was you, Doctor, who indicated there were computer glitches, for example.

Ms. EKSTRAND. I think that this is a system of collecting information that hadn't gotten any attention for quite a few years, and when it was not the subject of attention perhaps got somewhat—

Mr. DELAHUNT. People got sloppy?

Ms. EKSTRAND [continuing]. Messy because it wasn't very important to them.

Mr. DELAHUNT. Let me follow up. The next question would be: you are obviously aware of the fact that there have been significant reductions in funding for LSC over the course of the past 3 or 4 years. Could that account for inadequate funding for the administrative mission of the various grantees who, I'm sure, were overstressed in trying to meet the demands that were placed on them?

I'm talking about their mission of providing legal services for the poor.

Ms. EKSTRAND. We didn't look at that, per se, but when we did talk to executive directors about what causes there might have been for some of this, some of the problems with the case reporting, administrative inattention was one of the causes they cited as a reason why they—

Mr. DELAHUNT. But did you probe further? Was it just administrative inattention, or was it because, in their judgment, they did not want to expend the necessary resources, the dollars that they received on the administrative side, as opposed to providing the legal services?

Ms. EKSTRAND. We really don't know. We didn't probe that.

Mr. DELAHUNT. Well, I think that would be something that would be very informative for the Congress. I mean, if the reality is that there has to be increased funding to meet the administrative demands for the various grantees, that's something that this Congress should be made aware of. I mean, we've experienced sharp reductions in funding for LSC, and I think, for them to meet their mandate in terms of reports to Congress, we have a concomitant responsibility to provide the resources for them to do it in an appropriate way.

Ms. REZMOVIC. In our survey of the executive directors, they mentioned three causes for problems. One of them dealt with administrative inattention, another one dealt with their automated computerized management system, and the third one dealt with the lack of clarity of the guidance.

With respect to the administrative inattention, they said there were not stringent reporting requirements prior to the issuance of the revised 1999 handbook. So, the executive director didn't say that they didn't pay attention to administrative matters because there was no money, per se, but because they were not a priority. The current requirements for timely closing of cases and avoiding duplicate case counts were not there in 1997.

Mr. DELAHUNT. So, in other words, reading between the lines, it would appear that there would need to be additional funding for them to meet these new criteria.

Ms. REZMOVIC. Well, they're paying more attention to the criteria now.

Mr. DELAHUNT. I'm sure that they are, as a result of Congressional action.

Ms. REZMOVIC. I think grantees were unhappy with our coming in and looking at, for example, how many duplicate cases there were when, in fact, there was not a formal requirement for them to not have duplicate cases. One would think it would be a good idea not to count cases twice, but there was no requirement for them to avoid double counting before. There is now.

Mr. DELAHUNT. Just one more question, Mr. Chairman.

You know, this is very informative, and I think it is a good exercise, but, in terms of funding for LSC, it is my understanding that it is not based on case numbers, and that the formula for funding is predicated on the census. Am I correct?

Ms. EKSTRAND. Grantees?

Mr. QUATREVAUX. Each grantee's. Yes.

Mr. DELAHUNT. I'm sorry?

Mr. QUATREVAUX. Each grantee's funding is based on census data. That's correct.

Mr. DELAHUNT. So that there wouldn't be any financial incentive to over-report statistics. Is that a fair statement?

Mr. QUATREVAUX. I'm unaware of any.

I want to answer your question on administrative systems and technology.

In general, Legal Services grantees are not in the forefront of new technology, or even contemporary technology, and that is apparently an old problem. There are, I'm told, more than 70 different versions of case management systems out there, many of them no longer supported by the vendor.

Mr. DELAHUNT. Seventy different case management systems?

Mr. QUATREVAUX. That information I got from LSC management.

I want to tell you, though, that I have a hypothesis, and it goes like this, and it is based on an experience I had in 1972 when I was assigned to the Oakland Army Base, which at that point was an enormous trans-shipment operation for resupply of Vietnam.

Shortly after my arrival, I was informed that the provost marshal of the Army was coming with 100 agents because they believed that there was phantom cargo and that they believed that there was organized crime involved and this was a systematic operation. These shipments could not be located.

And when the dust settled on that, what we found was we had a batch processing system where every time a piece of cargo moved a punch card had to be submitted to the central computer, but the cargo moved faster than the cards, so when the computer didn't have the right answer somebody would dummy up a card to make it work.

What happened was the cargo got shipped but the documentation stayed in the inventory.

And let me also point out to you that your grocery store, prior to the implementation of point of sale inventory systems, always used to have lousy inventories, and they had to do a physical inventory periodically to get it right.

Now, that's what LSC grantees have to do, barring a technological solution.

Mr. GEKAS. Would the gentleman yield for one moment in the extended period here?

The gentleman asked what he thought our witnesses might know about the motivation, why would the people over-count? Does anyone dispute the human factor of putting one's best foot forward, that these grantees and the people who were putting these statistics together wanted to show how busy they were, how many cases they were filling out, how overburdened they are? Wasn't there any kind of that conclusion drawn by the inspectors in this case?

Mr. QUATREVAUX. Well, we didn't have any evidence of that, but I agree with you. The human factor is always there, and there's no performance measurement system that has been invented that the people subject to it do not attempt to game to their benefit.

Mr. GEKAS. I have no further questions.

Mr. DELAHUNT. Just to reclaim my time, I just want to restate this because I want to be clear and I think it is important for members of this subcommittee.

There is no financial incentive. I can understand the human motive in terms of wanting to look good—we all want to look good—to over-report case statistics, because LSC funding is predicated on a census-based formula.

Is that a correct, accurate statement?

Mr. QUATREVAUX. I'm unaware of any financial incentives.

Mr. DELAHUNT. Thank you.

Mr. GEKAS. The time of the gentleman has expired.

The time of the panel has expired. We excuse you with the thanks of the committee, and we also ask you to put on your record your assent to submit to any written questions that the members of the committee might forward to you.

Mr. QUATREVAUX. The OIG would be happy to do that, Mr. Chairman.

Ms. EKSTRAND. The General Accounting Office would be happy, as well.

Mr. GEKAS. We thank the witnesses and we excuse them, again with our gratitude.

We now empanel the second group of witnesses, who are, first, John McKay, president of Legal Services Corporation. Mr. McKay has served as president of the Legal Services Corporation since 1997. Prior to that appointment, he was chair of the Equal Justice Coalition, a bipartisan organization comprised of nearly 100 Washington community leaders and other groups.

In the late 1970's, Mr. McKay was a legislative aid to former Congressman Joel Pritchard of the State of Washington, who is remembered with great affection by many members, including your co-panelist, I'm sure. President George Bush later appointed him as a White House Fellow. He also served as a special assistant to FBI director William Sessions.

Mr. McKay has been very active in the American Bar Association, where he served on the Association's Board of Governors and its House of Delegates.

From 1988 to 1989, he was president of the Young Lawyers Division of the Washington State Bar Association.

Joining him at the table is our former colleague, John Erlenborn, who is the vice chair of the board of directors of the Legal Services Corporation. He's also an adjunct professor at Georgetown University Law Center.

Mr. Erlenborn is former Member of Congress from the State of Illinois. He served in the House from 1965 to 1985. During his tenure with the House, he was one of the drafters of the legislation that established the Legal Services Corporation.

Mr. Erlenborn has previously served as Chair of the U.S. Department of Labor Advisory Council on Employee Welfare and Pension Benefit Plans, and is a former partner of the law firm of Seafarsh, Shaw, Fairweather, & Geraldson.

We welcome the panel. We open with the normal admonition to try to keep your remarks as well confined within 5 minutes as possible, in the meantime accepting your written statements for the record without objection.

We'll begin with Mr. McKay. Or would you prefer that Mr. Erlenborn go first?

Mr. MCKAY. Mr. Chairman, thank you.

Mr. GEKAS. Then we'll do that.

Mr. Erlenborn?

**STATEMENT OF HON. JOHN N. ERLENBORN, VICE CHAIR OF
BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION**

Mr. ERLENBORN. I thank the gentleman for yielding, and thank you, Mr. Chairman.

It is a pleasure to be here to speak for access to justice for all Americans.

This is the 25th year since President Nixon signed the Legal Services Corporation into law—by the way, the last bill, I'm advised, that he signed as President. Again, a little aside, the next bill that was signed was signed by President Ford on Labor Day of 1974. That was ERISA. Both of those bills I had a part in shaping.

Over the years, we've established a strong record of achievement in serving the poor with their civil legal needs. As a result, we have built substantial bipartisan support in Congress.

On behalf of the board of directors of the Legal Services Corporation, I'm happy to report to you on the activities of the corporation. I'm very proud of the work of the corporation and how it successfully manages its national legal services program.

When I most recently joined the board, it was in the process of adopting the regulations to implement the restrictions which Congress was then enacting.

Contrary to the false claims of opponents of the LSC, the board and the administration of the LSC was prompt and effective in enforcing these restrictions.

We've also successfully and vigorously defended the restrictions imposed by Congress 3 years ago in Federal litigation in both the *Lash v. LSC* case in Hawaii and the *Velasquez v. LSC* case in New York.

When these cases were filed, by the way, the opponents to access to justice for the poor promptly charged that the LSC was trying to avoid enforcing the Congressional restrictions by the filing of these actions—this in spite of the fact that we were the defendants, not the plaintiffs. This is but one example of their habit of ignoring the facts in an attempt to put the LSC in a bad light.

Recently, the LSC president, the board chairman, and I testified in the Appropriations Subcommittee on the fiscal year 2000 appropriation for the corporation. The issue of case statistics reporting was raised. I believe that it was made quite clear that the grantees who reported the statistics have nothing to gain, since the poverty population in their service area was the criteria for allocating grants.

It was also clear that the LSC merely compiled the numbers without change.

In spite of the facts, as clearly shown in the testimony before the subcommittee, one of the subcommittee members pointed at the president, the chairman of the board, myself, and said, "You are cooking the books."

The LSC inspector general and the General Accounting Office, in their written reports and again today in testimony, have both issued reports on case reporting. Neither have found fraud or intentional misrepresentation.

At one time, I sat on the other side of this table, and I had some of the same concerns about the Legal Services Corporation that some of you may have had. I was involved initially in managing the legislation that created the Legal Services Corporation during, by the way, the Nixon Administration, and it was an Administration proposal.

Over the course of the years, I was disturbed by some of the things that were being done by the LSC grantees. These issues were politically sensitive, such as redistricting, reapportionment, suing State, county, and city officials. The day-to-day needs of the poor were not necessarily being served by that, in my opinion.

Today, however, the Corporation is a different organization than it was a few years back. I have twice served on the board of the corporation. In 1989, I was appointed by President Bush, and about 3 years ago I was appointed by President Clinton.

These two periods of service are starkly different. In 1989 and 1990, about half of the board was dedicated to destroying the LSC, the other half to saving it. The president of the LSC at that time was on the side of those seeking to destroy it.

They did not win, but it was a trying time to be on the board.

Having joined the board about 3 years ago, I can tell you that now we are all working together in a bipartisan manner. We are all dedicated to seeing that the will of Congress is carried out.

We were successful in the two cases I mentioned earlier, and we won with the aid of pro bono attorneys. We've adopted strict regulations to implement the restrictions that Congress adopted.

I believe that the record of the LSC in recent years fully justifies the confidence of Congress. The cause of access to justice justifies a substantial increase in the appropriations needed to accomplish that goal.

Thank you, Mr. Chairman.

Mr. GEKAS. We thank the gentleman.

[The joint prepared statement of Mr. Erlenborn and Mr. McKay follows:]

PREPARED STATEMENT OF HON. JOHN N. ERLENBORN, VICE CHAIR OF BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION AND JOHN MCKAY, PRESIDENT, LEGAL SERVICES CORPORATION

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, thank you very much for the opportunity to testify. The Legal Services Corporation ("LSC" or "the Corporation") welcomes this opportunity to address the House Judiciary Subcommittee on Commercial and Administrative Law which has oversight responsibility for the Legal Services Corporation. The Legal Services Corporation is a private, non-profit corporation, created by Congress to seek to ensure equal access to justice for all by supporting the provision of civil legal assistance to those who otherwise would not be able to afford it. For Fiscal Year 1999, Congress appropriated \$300 million for LSC, \$289 million of which the Corporation is using to fund 257 grantees throughout the nation and its territories. The Corporation uses less than 3% of its total appropriations for its own management and administration.

On behalf of the Board of Directors of the Corporation and its Management Team, we are pleased to report on the record of accomplishment the Corporation has compiled over the past six years. We take particular pride in the Corporation's imple-

mentation and enforcement of the Congressional restrictions enacted in 1996, as well as our management initiatives to promote the highest and best use of federal funds in every state and encourage competition for legal services grants. The LSC Board and staff are committed to its mission as defined by the LSC Act: to promote equal access to our system of justice for low-income people throughout the United States.

In his remarks in August, Chairman Gekas stated that this oversight hearing would be about accountability: a careful review of the facts to assure Congress and the American people that LSC funds are used to serve the poor and guarantee them access to the courts. He also urged that accountability for these goals by all professionals in the civil equal justice community be part of the next era of LSC. We are here to demonstrate, by our record since 1996 and by our open and complete cooperation with the fact-finders looking into the case service reporting issues, that accountability—and credibility—are central to the present era of LSC.

RECORD OF ACCOMPLISHMENTS, 1996-99

1. *Competition.* The role of LSC is to manage and oversee the federal funds that support the direct provision of legal services by some 257 grantees across the nation and its territories. Since 1996, the Corporation has used a system of competition for grants to promote the economical and effective delivery of legal services, as required by §1007(a)(3) of the Legal Services Corporation Act. We encourage local legal services providers and others to compete for available grants by broadly circulating information about the availability of grant funds and by providing outreach and technical support to potential applicants.

In the competition process, LSC evaluates applications according to established quality standards and awards grants to the applicants best able to provide high-quality legal services in accordance with applicable legal requirements. LSC also uses the competition process to promote increased volunteer private attorney involvement and to expand public-private partnerships, through which other resources can be secured to build upon federal funding. During the grant period, LSC works with successful applicants to improve areas identified in the competition process as requiring development.

In 1999, our fourth year of competition, we received grant applications from 169 applicants for 217 service areas in 41 states and the District of Columbia. There were multiple applicants in five (5) service areas. These FY 2000 grant decisions will be made this November. Seventy-three current recipients whose grants were not up for competition this year were subject to a grant renewal process to ensure their continued compliance with grant conditions.

Competition has resulted in improved legal assistance to our client community. First, it ensures the most effective and efficient applicant in each service area is awarded the grant to deliver legal assistance to low-income persons. While competition between more than one applicant for a service area is rare, the process has allowed for several changes in legal services providers in the last four years. Most recently, a new applicant successfully competed with an LSC grantee of long-standing to take over the provision of legal assistance in a large, metropolitan area in the mid-west. Second, the competition process identifies weaknesses and strengths of programs. When necessary, programs are visited, short funding periods are initiated and improvement efforts are undertaken. This process has led to important improvements and, where reform was not forthcoming, to the replacement of providers. Third, through the use of technology, LSC is developing the capacity to analyze application data in order to identify significant statistics regarding the programs; for example, where programs are most successful in leveraging non-LSC funding. Finally, the state planning process, which is a component of the competition process and will be explained in more detail below, asks programs and other legal services providers in each state to work together to more effectively deliver services. Competition has already led to the growth of centralized intake systems, to more consumer education and self-representation projects, and to more effective pro bono efforts.

2. *State Planning.* LSC, as a major funder for equal access to civil justice in every state, has a duty to stimulate the most effective means of delivering legal services to low-income and vulnerable people. We are committed to effective and meaningful partnerships with our grantees and the broader civil justice community. We are also obligated to ensure that our investment promotes the efficiency and effectiveness of client service and complements the efforts of other civil legal services providers.

Beginning in February 1998, the Corporation has required all grant recipients to participate in a process to develop and implement a comprehensive, integrated statewide delivery system, in every state. The goals of this process are to ensure

the following: that programs= efforts are coordinated with all providers in a state to meet pressing client needs; that there are enough opportunities for training and information sharing between programs; that programs are keeping up with and using new technology; and that programs are working together to increase resources and develop new initiatives to expand the scope and reach of their services. In concert with all stakeholders, each LSC-funded program must, therefore, assess the strengths and weaknesses of the current approach in their state, establish goals to strengthen and expand services to eligible clients, and determine the major steps and a timetable necessary to achieve those goals. Our overall objective in this process is to promote the highest and best use of federal dollars in every state system. LSC will continue to review program configuration in all states and promote program collaboration and/or consolidation where it appears that federal funds could be used more effectively and efficiently by programs or joint efforts serving broader areas or entire states. In addition, while configuration is often the most visible component of the state planning efforts, it is only one of several strategies to available to achieve these goals. Therefore, LSC will seek to identify, test, and evaluate other new strategies to enhance the effectiveness and quality of legal services, and to promote use of promising strategies.

3. *Regulations.* Development of regulations is a major function of the Corporation and is vital to the oversight of the grant system. Since 1996, LSC has revised and issued final rules affecting 24 parts of its regulations. For example, in 1996, the Corporation issued three rules affecting timekeeping requirements, prohibiting representation in drug-eviction cases, and establishing a system of competition for its grants—all before the 1996 legislative reforms became law. Subsequently, the Corporation approved 14 regulations by July 1996 to place into effect the 1996 legislative reforms passed in April of that year. Since that time, the Board and LSC Management have worked diligently to see that all the Congressional reforms are promptly implemented through regulation and that policy guidance in other areas is kept up to date and is in full conformance with the law.

4. *Enforcement of Congressional Restrictions.* We are committed to ensuring that laws passed by Congress are fully complied with by our grantees. In 1996, Congress imposed new, and expanded existing, restrictions on the types of activities in which LSC grantees may engage to refocus the LSC delivery system on serving individual clients with particular legal needs. Legal services attorneys are not permitted to initiate or participate in class actions. They may not challenge or engage in any activity to reform the welfare system. They may not engage in direct or grassroots lobbying on behalf of their clients, although they are permitted to use non-LSC funds to respond to written requests of officials for information or testimony and to participate in public rulemaking processes. For cases and claims initiated after April 26, 1996, they may not collect court-awarded attorneys' fees. Litigation on behalf of prisoners and representation of undocumented and other categories of aliens are also prohibited. Other requirements addressed redistricting, cases involving eviction from public housing of individuals charged with or convicted of drug violations, administrative lobbying, and the direct solicitation of clients. Unlike past efforts to redirect the work of legal services, these provisions apply to all of the funds of a recipient, with few specified exceptions.

The Corporation has made every effort to ensure that these restrictions are followed by all of our grantees and that the mandate of Congress, as enacted in LSC's FY 1996 appropriations legislation, is being carried out. This Administration has not hesitated to take strong actions when grantees have failed to comply with the law or LSC regulations. Fiscal sanctions have and will continue to be imposed, where necessary and appropriate, up to and including termination of the grant in its entirety. For example, in 1997 LSC investigated the Texas Rural Legal Aid ("TRLA") for its involvement in a lawsuit challenging absentee voting by non-resident military personnel in a local election. Although TRLA promptly withdrew from that case, LSC determined that TRLA had violated the legal restriction against claiming attorneys' fees and, therefore, admonished the program and recovered the \$7,500 in costs related to the filing of the case. In 1998, the Corporation withdrew funding from the Legal Aid Society of Alameda County based on its determination that the program lacked the management and leadership capability necessary to ensure compliance with the law and Corporation policies. The lack of proper oversight at the program had been documented by the Corporation's Office of Inspector General and in an on-site review conducted by LSC's compliance specialists. Another legal services provider was found for the Alameda service area. Most recently, LSC recovered \$17,000 in LSC funds from the Farmworker Legal Services of North Carolina ("FLSNC") based on its investigation finding a violation of the law by the representation of aliens who were never present in the United States. LSC also directed that its migrant funding grant be withdrawn from FLSNC and administered

directly by the Legal Services of North Carolina under strict procedures to improve management, administration, and oversight of the migrant funds.

The sum of these actions are indicative of LSC's commitment to active grant management to maximize the use of its federal funding and ensure the integrity of the programs entrusted to it.

5. *LSC Response to Lawsuits Challenging Congressional Restrictions.* The Corporation has vigorously and successfully defended its regulations and the underlying statutory provisions in two lawsuits challenging their constitutionality, *Legal Aid Society of Hawaii v. LSC* (U. S. District Court, District of Hawaii) and *Carmen Velazquez et al. v. Legal Services Corporation* (U.S. District Court, Eastern District of New York).

A three-judge panel of the U.S. Circuit Court of Appeals for the Ninth Circuit ruled on May 19, 1998, in favor of LSC on the appeal in *LASH*. It unanimously reaffirmed the ruling of the U.S. District Court in Hawaii that the application of LSC restrictions to a recipient's non-LSC funds does not violate the plaintiffs' First Amendment rights of free speech and association. Retired Justice Byron White wrote the opinion for the panel, which concluded that LSC's regulations complied with precedents set in the 1991 *Rust v. Sullivan* case regarding restrictions on federally-funded programs. The Supreme Court has denied *certiorari* in that case.

On January 7, 1999, the Second Circuit upheld as constitutional virtually all of the statutory restrictions on the use of funds by LSC's grantees that were challenged in *Velazquez v. Legal Services Corporation*. In *Velazquez*, the panel was divided solely with respect to a proviso to the restriction on litigation involving welfare reform. The majority found that the proviso to the exception for "suits-for-benefits" that bars challenges to existing welfare reform laws impermissibly discriminates on the basis of viewpoint—that is, it permits representation only if it favors the status quo over change. The dissenting judge on the panel would have found the entire welfare reform provision—including the "suits-for-benefits" proviso—to pass constitutional muster under *Rust*—a view shared by the Corporation and, it appears, the Court of Appeals for the Ninth Circuit. The Second Circuit has denied rehearing and the Corporation expects to pursue its partial appeal of *Velazquez* to the Supreme Court.

6. *Compliance Monitoring.* The Corporation's FY 1996 appropriation also mandated a new system for oversight of program compliance. The principal mechanism for checking grantee compliance with all statutory and regulatory requirements and restrictions is now the grantee's annual audit. These audits are conducted by Independent Public Accountants ("IPAs"), under the guidance and oversight of LSC's OIG. LSC Management retains responsibility for interpreting applicable law and regulations, investigating complaints, and enforcing compliance. Management worked cooperatively with the OIG to implement the new system, which is now fully in place.

The results to date demonstrate general, substantial compliance by grantees with the new Congressional requirements and restrictions. As reported by the OIG in its *Recipient Audit Reports* for 1998, the IPAs did not report any cases of noncompliance with statutory prohibitions or restrictions on the types of matters for which legal assistance may be provided.¹

THE CSR ISSUE

The Corporation acknowledges that serious questions have been raised concerning the accuracy and validity of the case service report (CSR) data submitted annually by our grantees. The Corporation is aware that problems exist in the statistical reports received and is making every effort to identify and correct those problems. The problems identified stem, in part, from a lack of clarity in some of the Corporation's case reporting guidelines and, more generally, from insufficient attention by grantees to the existing reporting and documentation requirements.

It should be kept in mind that the issue is largely one of grantee compliance with technical, administrative guidance on how and when to report certain activities. In no instance has the Corporation, its Inspector General, or the General Accounting Office, identified any fraud or intentional misrepresentation by any of the grantees in their compilation and reporting of this data. Nor have these or any of the financial and compliance audits conducted under the auspices of the OIG indicated that taxpayers' dollars were being grossly misspent by the grantees. In its public reporting of activities, which includes CSR data reported by its grantees, the Corporation did not intentionally deceive or mislead the Congress in order to secure for itself

¹"Results of Recipient Audit Reports for the Year Ended December 31, 1998." Final Report No. AU99-016. July 1999.

and its grantees increased funding, nor did it attempt at any time to hide from the public or Congress the problems which were emerging in the CSR system and its efforts to correct these deficiencies. Rather, the Corporation views the issues concerning the CSR data to be akin to those encountered by many government entities as they attempt to meet the goals envisioned by the Government Performance and Results Act ("GPRA").

1. *Self-initiated Review of CSR Data.* The Corporation's review of its CSR data was an outgrowth of its ongoing oversight responsibilities and became integral to its voluntary strategic planning process. Although not subject to the Government Performance and Results Act, the Corporation shared the aspirations of that law to rationalize the budget and appropriations processes by tying funding into objective measures of the agency's performance. In November 1997, the LSC Board adopted its first Strategic Plan for FY1998-2003. That plan is currently being revised—as are the initial plans submitted by many governmental entities. As recently reported by GAO, most federal agencies are far from meeting the goals set by GPRA for performance data on which the Administration and Congress can rely in setting budget amounts and appropriations levels. Nonetheless, the Corporation, having embarked on the path laid out by GPRA, recognized the need to assess the data currently available on grantee activity for its accuracy and adequacy as a measure of the Corporation's performance. This task fell initially to the Inspector General, who planned to perform numerous site visits during 1998 to assess the CSR system. Two factors shaped the planning process at that time: the forward looking nature of the objective—that is, how will the system function in the year 2000 and beyond as a performance measure—and the focus on systemic problems rather than the accuracy of any particular data submission. Hence, the plan was to identify the types of errors to which the current case reporting system may be prone in order to eliminate those errors system-wide. It was not designed to validate or test the accuracy of the national totals of cases handled by grantees in 1997.

2. *The CSR Problem Assessment.* What the Corporation and its Inspector General found when they began the assessment of the CSR system was a 20-year-old reporting structure, the guidance for which had not been updated since 1993. The reporting system rested on the definition of a "case." However clear and meaningful the definition of a case may have been in the past, it was evident that the definition had not kept pace with the changes in the service delivery systems. As the pace of the evolution of service delivery systems and the configuration of grantees accelerated following the funding cutbacks and program reforms in 1996, and spurred on by the technological revolution, the reporting of grantee activity solely on the basis of "cases" was becoming increasingly inadequate, resulting in inconsistent and inaccurate reporting.

Moreover, routine, on-site reviews of grantee activity reports has been lacking since 1995. Because the grant activity reports of which the CSRs were a part were neither a statutory nor regulatory requirement, the IPAs were not charged with determining grantee reporting compliance. During 1996 and 1997, the Corporation's enforcement capacities were devoted primarily to compliance with the 1996 legislative reforms, following up on compliance referrals from the Office of Inspector General, and investigating complaints. Its staff oversaw the transition efforts in 1996 to ensure that the LSC funded programs properly and timely withdrew from some 630 class actions, 428 cases involving prisoners, 2,991 ineligible alien cases, and otherwise conformed their policies and practices to the law. There were few resources available to systematically oversee administrative requirements such as CSR data. Nonetheless, in early 1998, the Corporation did investigate a complaint which had been referred by its Inspector General alleging a grantee was purposefully inflating its CSR data. While that investigation did find problems with the grantee's reporting of cases, it did not find any intentional misreporting, fraud or mismanagement, and the system errors were corrected by the grantee prior to the submission of its 1997 CSR data.

As these concerns surfaced, the Corporation decided as an initial step to reissue the 1993 CSR Handbook in May, 1998, with additional guidance on particular areas which were considered to be most prone to error. In general, programs were directed to review their own reporting procedures and practices to ensure they conformed to the Handbook and to ensure that all branch offices were aware of and were following these procedures. Programs were reminded not to report financially or otherwise ineligible clients, referrals of ineligible cases or cases for which no legal work was performed, and cases wholly funded with non-LSC funds. Recognizing that the guidance would not affect the 1997 CSR data which had already been submitted by the grantees, the Corporation sought to heighten the awareness of grantees to the CSR requirements and focus their attention on potential problem areas. As previously reported to Congress, a number of grantees did voluntarily submit corrections to their

1997 CSR data during 1998. During the course of the year, as more information became available to the Corporation about the nature and scope of the problems with the CSR data, LSC undertook substantial revisions to the CSR Handbook, which was issued in November, 1998.

3. *On-site Reviews.* The Inspector General began the field work for the six programs selected for the CSR audits in April, 1998, and completed the field work by November, 1998. Following government auditing standards, the OIG established the criteria by which the grantee's CSR system would be audited and the results reported. The following chart identifies the six programs reviewed by the OIG, the month in which the field work was completed, the month in which the final report was issued, and the error rate attributed to closed cases:

Program Field Visited	Work Completed	Final Report Issued	Error Rate for Closed Cases
Legal Services of Northern Virginia	May 1998	October 1998	13%
Gulf Coast Legal Foundation (Houston)	June 1998	July 1999	22%
Legal Action of Wisconsin, Inc.	July 1998	August 1999	6%
Legal Aid Society of San Diego	October 1998	March 1999	68%
Prairie State Legal Services (IL)	November 1998	May 1999	6%
Legal Services of Greater Miami, Inc.	November 1998	March 1999	76%

In the course of these audits, the Inspector General identified a number of common causes to errors in reporting the number of closed cases. Most, but not all, programs had failed to timely close cases, thus counting a case as closed in 1997 when it should have been closed in a prior year. Another error common to many programs was the counting as a case applicants for service who were referred to another provider or who otherwise did not receive legal assistance which met LSC's definition of a case. Most, but again not all, the programs had counted some cases more than once—although the reason for the duplication varied. For example, one program counted the same case as closed at the time it referred the case to the provider of its private attorney involvement ("PAI") program and again when the PAI provider closed the case. Another program counted as separate cases subsequent client contacts even though it involved the same legal issue. Most programs also had a higher error for their open case count than for their closed case count. For all programs, the primary contributor to the open case error rate was the grantee's failure to timely close cases. Finally, while not included by the Inspector General as a misreported case for CSR purposes, the lack of adequately documented financial eligibility, particularly with respect to a client's assets, and the absence of signed citizen attestation forms were noted in a number of the reports.

The audits conducted by the Government Accounting Office and reported in June, 1999, confirmed the Inspector General's findings as to the factors causing systemic errors in grantee case reporting. The GAO visited five large programs: Puerto Rico Legal Services, Inc., Legal Services for New York City, Legal Aid Foundation of Los Angeles, Legal Assistance Foundation of Chicago, and the Legal Aid Bureau, Inc. in Baltimore, Maryland. Overall, the GAO deemed questionable approximately 34% of both open and closed cases reported by the five grantees. The percentage of questionable cases for individual programs ranged from 7% to 42%. A problem common to all programs was the untimely closure of cases, although again the extent of the problem in any particular program varied from under 4% in one program to over 30% in another. The GAO audits also confirmed that documentation problems, as noted by the earlier Inspector General reports, were widespread. Overall, the GAO questioned between 5–9% of the cases reported because of the lack of adequate financial eligibility documentation and between 7–24% of the cases for lack of citizenship or alien status documentation. It should be noted that GAO concluded only that the case files failed to contain the documentation necessary to confirm the eligibility status of the clients served; it made no determination as to the eligibility or ineligibility of any these clients.

4. *LSC's Corrective Action.* As the audit information rolled out during 1998 and well into 1999, the Corporation gained a fuller understanding of the extent of the CSR data problem and its complexities. Even though quantifiable data was lacking during most of 1998, the Corporation had sufficient information to begin taking actions to address the problems. As previously noted, the Corporation reissued its CSR instructions to all grantees, calling their attention to problem areas known at that time. Recognizing that more action was needed to improve the CSR system, LSC has provided additional written guidance to the field, including a substantial revision

sion to its CSR instructions, conducted training sessions on that guidance, required all grantees perform a self-inspection of their CSR data, followed up with grantees where corrective action was found necessary, and has increased its on-site presence to test grantee compliance.

However, at the time it released the Factbook in June, 1998, summarizing the 1997 CSR data along with other information gathered from the grantees, LSC had only the preliminary feedback from the Inspector General on the site visit in Northern Virginia, information from two complaints investigation, and some anecdotal information concerning problems in a limited number of other grantees. None of this information suggested a nationwide problem in case reporting errors or provided any basis on which to extrapolate the findings to the case data compiled nationally.

Indeed, at no time during 1998, did the Corporation have sufficiently quantifiable data to consider amending the national case statistics reported in the Factbook. In particular, during the summer months when the House Subcommittee and Committee were marking up the Corporation's FY99 appropriations, the Factbook contained the best and most current information available to the Corporation and the public as to the level of activity as reported by its grantees. Moreover, it was not evident at the time what effect, if any, the CSR data had on the deliberations on the appropriations levels for the Corporation and its grantees.

Year	Number of Cases*	% Change	Year	Fiscal Appropriations*	House Committee % Change	Appropriations*	House Floor Action % Change
1992	1.56		1994	\$415		\$415	
1993	1.62	+3.5%	1995	278	-33%	278	33%
1994	1.69	+4.3%	1996	141	-49%	250	-10%
1995	1.66	-1.7%	1997	141	No Change	250	No Change
1996	1.43	-14%	1998	141	No Change	250	No Change
1997	1.46	+2.5%	1999	141	No Change	250	No Change

*All amounts in millions

Although firm information in the way of final reports was lacking, the Corporation was receiving useful information from the Inspector General's visits. This information was used to identify areas which needed to be corrected by improved policy guidance and more effective training at the grantee level. In November, 1998, the Corporation substantially revised the CSR Handbook to address the problems which had surfaced over the year and to emphasize to the grantees the importance of accurate case statistical reporting. The primary revisions that were made applicable to 1998 CSR data to be reported in March 1999 were the clarifications on the timely closing of cases and management oversight of case service reports. Grantees were again reminded not to count as cases activities solely supported by non-LSC funds, clients not eligible for LSC-funded assistance, and applicants that are referred without other legal services being provided.

In addition, a number of changes were to be made effective for the 1999 CSR data to be submitted in 2000. In general, all grantees were expected then to have fully automated their case management systems, have procedures to screen for duplicate cases, and separately reporting cases handled by PAI providers from those handled directly by the grantee. Another significant change was the requirement to report all cases which would be eligible for LSC services, regardless of funding source. It has been suggested that this change may cause an artificial increase in the number of cases reported through the CSR system. The purpose of the change is to achieve better accuracy and more consistency in the reporting of work facilitated by LSC funding. Our grantees have successfully leveraged their federal funding by attracting other private and public sources of funding. Grantees use their mix of funding in a variety of ways, and the current CSR system does not consistently collect and identify much of this effort on behalf of eligible clients. The revised reporting requirement should bring more uniformity to the collection of data as that relates to the eligible population. By using the grantees' funding information, we will be better able to factor from this more complete universe of data the work that can reasonably be attributed to LSC's funding.

The Corporation followed up the issuance of its 1999 CSR Handbook with a training sessions in December 1998, March and April 1999, and with additional written guidance issued in February, March and July, 1999.

In order to test the effectiveness of the Corporation's efforts in 1998 to correct deficiencies in the CSR system, the Inspector General decided to concentrate on 1998

data in six audits planned for 1999. The Corporation augmented these audits by dedicating its compliance staff resources in 1999 to perform on-site follow up on CSR audit referrals by the Inspector General's Office or the GAO and to conduct compliance reviews at additional locations. To date, the Corporation's compliance staff has conducted six on-site visits to programs to evaluate their CSR systems and has plans to visit six other programs by year's end. In addition, they have completed follow up reviews at four programs and plan on at least one more follow up review before the end of the year. Most recently, the compliance staff has been on-site at the Legal Aid Bureau of Maryland to work through procedures to ensure the access to materials necessary to a review of CSR compliance without implicating privileged materials.

Recognizing that even with the increase in the Corporation's physical presence at its grantees, it could not expect to cover all or even a significant percentage of its grantees. Therefore, in May, 1999, the Corporation directed all of its grantees to conduct a detailed self-inspection of the grantees' 1998 CSR data. The grantees were to certify to the Corporation by July 1, 1999, that their 1998 CSR data were substantially accurate—defined as 95% correct.

The self-inspection process served to focus grantee attention and resources on their CSR systems. The majority of the grantees were able to certify their submissions of 1998 data according to the Corporation's requirements. However, 60 grantees are currently unable to certify as to the accuracy of their 1998 CSR data, including many of the Corporation's largest programs. Each of these programs was required to identify the primary factors contributing to their error rates and to advise the Corporation as to what action they intend to take to correct these problems in the future. The Corporation is currently following up with each of the programs still experiencing deficiencies to ensure effective action is being taken to correct their CSR systems. LSC is also going on-site at both certifying and non-certifying grantees to test the validity of the self-inspection process.

Based on the certifications submitted, the Corporation has estimated the number of closed cases in 1998 to be approximately 1.1 million. In estimating the number of closed cases, the Corporation has adjusted downward all certified data submitted by its grantees by the maximum 5% error tolerance allowed and, further, has adjusted downward the data submitted by the non-certifying grantees by the particular error rates reported by or attributed to these programs. Thus, based on its current information, the Corporation is confident that the count of 1.1 million closed cases does not overstate the level of this activity in 1998.

In September, 1999, the GAO critiqued the Corporation's corrective actions to date and concluded that its actions were not sufficient to correct the problem. Based on a telephone survey with some 80 grantees, the GAO concluded that certain policy areas require more clarification, that more effective communication and training on the new CSR policies are required, and that the certification process could be improved by more adequate sampling in the smallest programs and more uniformity in the certification process. The Corporation generally agrees with these recommendations and is moving to implement them as expeditiously as possible.

The Corporation has recently begun receiving feedback from the Inspector General based on the site visits in 1999 to the Monroe County Legal Assistance Corporation in New York, the Philadelphia Legal Assistance Center, the Legal Aid Bureau, Inc. in Baltimore, Maryland, the Legal Services of Eastern Missouri, Inc., the Legal Services of North Texas, and the Volunteer Lawyers Project of the Boston Bar Association. These reports indicate that, with the exception of the Boston program, the CSR error rates for 1998 data continue to be unacceptably high. Untimely closing of cases, counting as cases applicants who receive no substantive legal assistance, and counting duplicate cases continue to be an issue. It is apparent from the persistence of the first two types of error that LSC's guidance may have come too late in the year to have had the intended effect on reducing or eliminating these problems. The Handbook was not expected to have had any significant effect on duplicate cases as the systematic screening for such errors was to go into effect in 1999. In addition, a new problem area involving the failure to take the applicant's name during intake has arisen; however, this appears to be isolated to two programs and has not been encountered elsewhere. On the positive side, the Corporation is encouraged by the Boston program's clean CSR audit.

The Corporation is also encouraged by a number of programs which underwent audits of their 1997 CSR data that were able to certify the accuracy of their 1998 CSR data. In addition, a number of other programs, although they were not able to certify that their 1998 CSR data met the 95% accuracy standard, reported promising reductions in their error rates. However, clearly more needs to be done.

5. *The Corporation's Future Plans.* While significant progress has been made, the Corporation agrees with GAO and others that more needs to be done. The Appro-

priations Committee has made clear its expectations that the 1999 CSR data will be reported to Congress by April 30, 2000, and has issued a mandate to the Inspector General to validate that data. The Corporation is committed to seeing that this problem is corrected and to carrying out the directives of this Congress.

With regard to the individual programs with continuing high error rates in their CSR data, the Corporation will pursue the corrective action plans submitted by these programs to ensure that the actions are promptly taken and effectively address the problems identified. The Corporation is prepared to take additional steps as necessary and appropriate with any program that fails to adequately address their problems.

In accord with the advice and recommendations by the GAO, the Corporation will do its part in assuring the grantees are provided full and clear guidance on CSR reporting policies and that their case management systems comply with operational standards to be issued by the Corporation. The Corporation will seek to find more opportunities and more innovative methods of ensuring that its guidance is adequately communicated to the necessary personnel at each of its grantees.

The Corporation intends to continue its efforts in the field to make compliance with CSR procedures a priority for all of its grantees. However, in view of its limited resources, the Corporation will ask programs to repeat their self-inspections in 2000 and certify as to accuracy of the 1999 CSR data being submitted. The Corporation will incorporate into this self-inspection process the improvements recommended by the GAO, including adjusting the sample sizes required and providing more uniform reporting mechanisms for the certifying and non-certifying programs. In addition, the Corporation will endeavor to validate the self-inspection process in order to have the requisite confidence in the data submitted. Finally, the Corporation will adjust the timing of the submission of the 1999 CSR data to ensure its compliance with Congressional direction to have the activity data reported to it by April 30, 2000.

All of these efforts will be directed at ensuring the accuracy of the 1999 CSR data. As great as these efforts are, the Corporation has not lost sight of—and it urges the Congress not to ignore—its original goal: the development of adequate and meaningful performance measures for its strategic planning purposes. Throughout this process, the Corporation has been mindful that however accurate the count of “cases” by its grantees, that alone will not suffice to measure their performance or that of the Corporation. We know that grantees provide a range of meaningful services to clients that is not being captured by the definition of a case. Moreover, the current reporting system fails to answer the question as to the benefits being received by the clients and, more importantly, what need exists that is not being met.

As with many other governmental entities, LSC is finding that these are not easy questions to answer. Nonetheless, this Board and the LSC management is committed to improving the reporting system to begin addressing needed performance measures. As an initial step, we are canvassing all our grantees to determine what additional sources of data currently exist and their experiences with measuring service outcomes and unmet needs. The Corporation is assessing the need for pilot programs to test and perfect new data collection mechanisms. While this will require much time and effort on the part of Corporation staff and its grantees, the benefits from the strategic planning process are substantial and we remain committed to achieving its goals. This Committee has our assurances that the design and collection of objective performance measures are and will remain a priority of the Corporation.

CONCLUSION

We welcome the Committee's interest in seeing that adequate accountability exists for the funding and functions entrusted to the Corporation. More importantly, we share the Committee's desire to assure the American people that the Corporation and its grantees are working to ensure the goals of equal justice for the poor of this Nation and maintaining their access to the courts throughout the land. The Corporation and its staff have dedicated themselves to these principles and to carrying out, to the best of its abilities, the mandates entrusted to it by Congress. Through this process, Congress has provided LSC with a clear mandate on its data collection and reports to Congress. As in the past, LSC intends to fulfill this mandate.

Mr. GEKAS. We turn to Mr. McKay.

STATEMENT OF JOHN MCKAY, PRESIDENT, LEGAL SERVICES CORPORATION

Mr. MCKAY. Thank you, Mr. Erlenborn. Thank you, Mr. Chairman, Ranking Member Nadler, members of the subcommittee.

I am very pleased to be here before you today to have this opportunity to report on the activities of the Legal Services Corporation and to dispel the claims of fraud that were made by some during this year's appropriations process.

I'm also here today to acknowledge to you that we do have inaccuracies in our system and that we are taking steps, as outlined by independent auditors which you previously heard from, and steps I will also indicate that we are taking internally to LSC to address those inaccuracies in our data.

And I'm also here to pledge to you to work with the committee and the staff and the Congress to make certain that the data Congress gets is accurate, reliable, and the true performance indicator of the work done by our lawyers, by our staff, and by our many volunteers across the United States.

I think that our vice chairman, Mr. Erlenborn, has done a tremendous job in outlining the basic changes made in the Legal Services Corporation and our mission in 1996.

Having come to the Corporation in 1997 as its president, I want to report to you that among my chief duties is to assure that the new requirements of Legal Services programs are complied with. In addition to being the chief advocate for Legal Services as required under the LSC Act, I'm also the chief regulator, as required by our board and by the Congress. And I think that in my 2 years plus now as president of the Corporation I've made very clear in our national grants system that assiduous compliance with the Congressional mandates will be required and enforced by LSC, and I think that our record of compliance is very, very clear.

We have taken actions with regard to TRLA—the Texas Rural Legal Assistance program. We have taken actions with regard to the Alameda program in California. We have taken actions with regard to the farm worker program in North Carolina.

I think it is rather clear that, where substantiated allegations of noncompliance by any recipient in this system are made known to us, and after an appropriate opportunity to be heard, that I have not hesitated to act to make certain that Congressional mandates are met, and I reiterate that pledge to this committee and to the Congress of the United States.

I would like to say, Mr. Chairman, with regard to the CSR issue, that I think the comments made by the inspector general and some of the charts that the inspector general displayed ought to lay to rest claims made by members outside this body with regard to fraud or misrepresentation.

I'm certain that I don't need to advise members of this committee of the basic legal requirements of fraud or misrepresentation, but chief among those elements would be intentional acts for some sort of gain, and it is clear, from the audits conducted by the inspector general and by the GAO, that no such evidence exists, nor are we aware of any such evidence internally at LSC with regard to any of the recipients.

This does not mean that the data possessed by LSC principally derived from its recipients is 100 percent accurate and reliable. In fact, I think the inspector general's charts that he related to you today indicate that we do have a serious problem that needs to be addressed.

With respect to the timing of information available to the management side of the corporation, I want to reiterate the inspector general's time line and indicate to you that, while the inspector general had audit reports that were not final, he did advise me orally, in the summer of 1998, and actually several months prior to that, that he was concerned about what some of his auditors were finding in the field with regard to CSRs.

Rather than wait for final audit reports, I directed our management staff to begin to look into this issue because I took the inspector general's oral remarks very, very seriously.

That I think is very key, because I think the committee should be aware that, throughout this period, I frequently questioned the inspector general as to whether his audits were in such a position that he could or I could draw conclusions regarding systemic problems, and I was assured by the inspector general, as I think was related in his slides today, that this was not the case, so that, while we did have some preliminary information regarding some problems, we did not have an indication of systemic issues.

I make that point to the committee today because, had I reached that conclusion, or I think had someone taken the position that I should have reached that conclusion, I think that my obligation would have been to either request that the inspector general make additional reports or to make them myself.

I think that my actions, which were to require further inquiry, to begin to look at this problem, which is evident in our response at LSC, was the appropriate response to take at that time, and I don't question it today.

Of course, today, at this point in time, we now know a lot more about the CSR issue, and it is clear, in the readjustment of our statistics, that our definition of what a case was and what our recipients were trying to report were not always the same.

LSC, and I, in particular, as president, take responsibility for what over a long period of time, probably 20 years, has been unclear guidance from LSC to the field. We accept the criticisms directed toward us by GAO and some by the inspector general. We welcome their inquiry. We supported the inquiry. I encouraged the inquiry being undertaken by the inspector general.

I want to assure the committee that our efforts to correct the existing data are ongoing and that we make sure that our current case reporting system is followed appropriately by our recipient network; in addition to that, Mr. Chairman, it is our desire to develop a better case reporting system, one which will provide more information to the Congress and to the American public about the services that are being provided.

I appreciate very much the opportunity to be here before the committee, and I'm available, Mr. Chairman, as I know our vice chairman, Mr. Erlenborn is, to answer any questions that you may have.

Mr. GEKAS. The time of the gentleman has expired.

The Chair will yield itself 5 minutes for the purposes of asking a couple of questions.

John, you implied in your statement that those who would dare—you implied this—dare to question the actions of the board were opponents of legal access to the legal system by the poor.

Mr. ERLNBORN. Mr. Chairman, you misunderstood me—

Mr. GEKAS. That is not—good—

Mr. ERLNBORN [continuing]. If that's the impression you got.

Mr. GEKAS. I'm glad I did.

Mr. ERLNBORN. I thought I made it clear that the evidence was produced before the Appropriations Subcommittee that there was no reason for grantees to misreport and that the Legal Services Corporation didn't change any of those numbers, and, in spite of that fact, it was one of the members of the subcommittee that said, "You're cooking the books."

Mr. GEKAS. All right.

Mr. ERLNBORN. Now, I'm not saying that he didn't have a right to ask questions—

Mr. GEKAS. You characterized—

Mr. ERLNBORN. He had no right.

Mr. GEKAS [continuing]. As opponents to the access to the poor. I'm going to ask questions, powerful questions, if I can—

Mr. ERLNBORN. Yes, sir.

Mr. GEKAS [continuing]. About the work of the Legal Services Corporation, and I consider myself one who supports access by the poor to the legal system. I want that to be clear.

Mr. ERLNBORN. I appreciate that.

Mr. GEKAS. Number two, John, you stated that the basis upon which the grantee acts with respect to granting legal services statistically is based on the number of poverty people in that segment; is that correct?

Mr. ERLNBORN. That's correct.

Mr. GEKAS. Why do we need reporting of cases at all, then, and why is it—why did the Legal Services Corporation receive all these years these statistics from these grantees as to the number of cases? What difference does it make?

Mr. ERLNBORN. The first answer to that question, Mr. Chairman, is the Congress has never required that reporting. The fact is—

Mr. GEKAS. But to accept that—

Mr. ERLNBORN. The fact is, the Corporation began that reporting. And it is also very interesting, when you hear the talk of those who, by the way, never voted to increase the funding of the Legal Services Corporation, say that they relied upon the reports. Now, it is interesting to note that from 1992 until 1998—I believe that's—no, 1996, I think—for a 5-year period, no report on case statistics was sent up to the Congress and nobody raised a question about it.

Mr. GEKAS. Do you believe, John, down deep, that Members of Congress are justified in seeing the reportage of the number of cases as being a move on the part of the grantees and the Legal Services Corporation to indicate to the Congress how massively busy they are and why they need more help and why more funding is required, etc.? Do you believe that a Member of Congress can't

be deluded or mislead by the high numbers that we've seen are completely erroneous?

Mr. ERLNBORN. I certainly agree with you. I would have no question about that. The question is not whether these facts were accurate. The question is whether somebody purposely tried to mislead the Congress. And I say the latter is absolutely not true.

Mr. GEKAS. Well, was there any decision ever made by the Legal Services board in their request for funding based on the number of cases that they had in their bosom, as reported by the grantees?

Mr. ERLNBORN. That was one of the factors that was included in the report to Congress in our request for an appropriation. Actually, in the course of history, most of the time when the case load was higher the appropriation was lower, and vice versa. It seemed to have no correlation one to the other.

Mr. GEKAS. But the assumption is that your requests for funding, in some part, were based on the number of cases that seemed to be floating into your offices, from the reports of the grantees.

Mr. ERLNBORN. No question about that, Mr. Chairman. And let me also state that this corporation was not within the requirements of GPRA, but it was a conscious effort on the part of the Administration and the board of directors to adopt, first of all, the planning process of GPRA, and, secondly, the reporting requirements, and it was our hope that those reports would be helpful in making the Congress aware of what was happening in our programs.

Mr. GEKAS. If you can, I would like you to submit to me, personally, and to other members of the committee, your estimate that the requests for funding that you made, which, in part, you acknowledge might have been founded on the number of cases reported, how that request for funding might be mitigated or lowered, how it could have been lowered with the real numbers that we now know for those specific years. Could you try to analyze that for me?

Mr. ERLNBORN. Well, Mr. Chairman, I might ask the Corporation to do that. I'm not a good guy for numbers.

Mr. GEKAS. I'm asking you because you're closer to me than that. [The information referred to follows:]

ANSWER TO QUESTIONS FROM CHAIRMAN GEKAS

SEPTEMBER 29, 1999

Mr. Gekas: If you can, I would like you to submit to me, personally, and to other members of the committee, your estimate that the requests for funding that you made, which, in part, you acknowledge might have been founded on the number of cases reported, how that request for funding might be mitigated or lowered, how it could have been lowered with the real numbers that we now know for those specific years. Could you try to analyze that for me?

Mr. Erlernborn (Vice Chair, LSC Board of Directors): Mr. Chairman, I believe the short answer to that question would be "not at all." While we readily acknowledge that we have made reference to the number of cases closed in our budget requests in past years, these statistics have never been the cause of any increase in the amount of money we have requested from Congress. Our requests have been based on what we feel is necessary to meet the mandate of this Congress and of the LSC Act to provide low-income individuals in our nation with access to justice in order to resolve civil legal problems. It is evident that CSR numbers have not been used as a measure to determine LSC's annual appropriation. Moreover, as the following chart illustrates, there appears to be no correlation between the number of cases closed by grantees and LSC's annual appropriation.

Year	Case Data*	% Change	Year	Fiscal Appropriations*	House Committee % Change	Appropriations*	House Floor Action % Change
1992	1.56		1994	\$415		\$415	
1993	1.62	+3.5%	1995	278	-33%	278	33%
1994	1.69	+4.3%	1996	141	-49%	250	-10%
1995	1.66	-1.7%	1997	141	No Change	250	No Change
1996	1.43	-14%	1998	141	No Change	250	No Change
1997	1.46	+2.5%	1999	141	No Change	250	No Change

*All amounts in millions

We do, however, recognize that this information is important for Congress to better assess the performance of federal dollars in the national legal services program. We are strongly committed to ensuring Congress receives reliable and timely information about the work of LSC grantees. Over the past twelve months, the Corporation's management has worked diligently to improve guidance to grantees and to better ensure the accuracy of LSC case service reporting data.

Mr. ERLNBORN. But let me say that there was no great correlation between what we were asking and the numbers.

Mr. GEKAS. Then why would you use the numbers at all, John? I don't understand that.

Mr. ERLNBORN. Well, because we had them and we reported them. But our planning, Mr. Chairman—I think you can appreciate this—in asking for a certain level of funding was try to recoup what we had lost when we were at one time over \$400 million and were slashed, and each year after that we asked for as much as we thought that the Congress might possibly respond to, and it was not based in any great part on the numbers that were reported.

Mr. GEKAS. Well, you'll have to acknowledge that in some part it was or else you wouldn't have made an effort to show the Congress how many cases in the reports. But that's a question of difference of opinion, perhaps.

The time of the chairman has expired.

The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. McKay, I am told that the initial goal by the LSC back in 1995 was that to do the job effectively you'd need two attorneys for every 10,000 eligible individuals; is that true?

Mr. MCKAY. I believe that's correct.

Mr. NADLER. Okay. And they also estimated in 1995 that to have two attorneys for every 10,000 eligible individuals, they would need a further appropriation; is that correct?

Mr. MCKAY. I think that's correct.

Mr. NADLER. And in 1995, Congress actually appropriated \$415 million, then reduced it to \$400 million. In 1996, for political reasons—I don't mean improper reasons, I just mean political forces worked out that way—it was sharply cut to \$278 million, and it has since been increased by \$5 million to \$283 million.

Now, given the fact that the funding is so far short, never more than 40 or 45 percent of what would be necessary to have two attorneys per 10,000 eligibles, in that light, and given the fact, by the way, that the Heritage Foundation, in its July 22, 1999, "Backgrounder" says that "LSC services only about 5 percent of the

eligible poor," which just makes the point, from the Heritage Foundation one would think one should increase the funding of the LSC by 20 times so they could serve all the eligible poor. They may draw a different conclusion, but that's the conclusion I draw from the Heritage Foundation report, if you can only serve 5 percent of the eligibles.

But, given the fact that you would need a budget of \$848 million to do the job right, according to your own estimates of 1995, increased by inflation this figure would be approximately \$900 million, aren't the differences in these statistics, the mistakes in these statistics, when you're talking about a budget in the neighborhood of \$270 or \$300 million, completely irrelevant to the funding?

Mr. MCKAY. I don't think the statistics, Congressman Nadler, are irrelevant, and I do think that the statistics that we provide to Congress are important to establish certain things.

The first thing that ought to be considered, I believe, in terms of complying with the LSC Act, is a determination of what the unmet civil legal needs are in the United States, because we are charged at LSC—

Mr. NADLER. Yes, I agree with you, but what I'm saying is I'm sure there are a lot of different reasons for these statistics, and I'm not saying you shouldn't do them and do them right, but, in terms of finding what the need is and therefore what the appreciation ought to be to meet the need, these statistics don't seem to be particularly relevant, are they?

Mr. MCKAY. I think there might be some remote relevance, but I agree with you, they are not an indicator of what is happening in Legal Services offices.

For example, there are many legal aid offices that turn down eligible clients all the time because they don't have the resources to serve those individuals.

Mr. NADLER. I would, in fact, say further that if I were in some LSC unit and if I had a nefarious plot to deliberately—which no one has indicated was the case—but if I were nefariously plotting to falsify statistics in order to indicate the necessity for more money, I would under-report the number of cases we had handled, because we know the total number of cases that could be handled, and that would—and if we only handle 5 percent of them as opposed to 10 percent of them, that would indicate the need for even more money, wouldn't that?

Mr. MCKAY. I think you are on exactly the right point, which is the fact that we are not meeting the overwhelming need for critical legal services in the United States. We know that is true. Unfortunately, the empirical study with regard to unmet need is a little bit dated at this point in time. I'm talking about empirically now, which was the American Bar Association study, I believe, in 1992.

But we have the evidence from our recipients across the country and the fact that I have been in a number of those offices and met with attorneys who have to turn down eligible clients makes it very clear that, with the funds we are provided, you're absolutely right—we don't have the ability to meet the overwhelming need.

Mr. GEKAS. Will the gentleman yield for a moment?

Mr. NADLER. No, I will not. Well, yes, if you'll give me additional time. Yes. Certainly, yes. Yes, I yield.

Mr. GEKAS. A further response to what Mr. McKay attempted to respond to you when you asked him does it make any difference about the statistics, the gentleman, Mr. McKay, did state—we have quotes—that case statistics play an essential role in the budget request and performance plan submitted by LSC to the United States Congress each year. And that's what Mr. McKay has said—that, indeed, it does play a role. The statistics are gathered for specific purposes.

Mr. NADLER. Mr. McKay, is that a complete quote?

Mr. MCKAY. No, it is not a complete quote. I believe that that is a—

Mr. GEKAS. It's not?

Mr. MCKAY [continuing]. Quotation taken from a letter by me to the field of all of our recipients, in which I was urging them to draw their attention to the case statistic report problem and telling them why I believe that case statistics were important and needed to be accurately reported to the Congress.

Mr. NADLER. Could you give us the rest of the quote?

Mr. MCKAY. Pardon me?

Mr. NADLER. Could you give us the rest of the relevant part of the quote?

Mr. MCKAY. Yes. "Case statistics play an essential role in the budget request and performance plan submitted by LSC to the United States Congress each year. Therefore, the reliability of case statistics submitted by programs to LSC is vital to obtaining continued Federal funding for legal services."

And I went on to say, "The Office of—" the next sentence says, "The Office of Inspector General's Audits of Grantee Case Service Reports raised some preliminary concerns about the consistency with which case statistics have been reported. At the same time, we recognize that counting cases tells just part of the story of the impact that programs have on the lives of low-income people."

Mr. GEKAS. I ask unanimous consent that the letter be included into the record.

Mr. MCKAY. I'd be happy to do that.

[The information referred to can be found in the appendix.]

Mr. GEKAS. The gentleman is accorded an extra 42 seconds.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. McKay, let me ask you something. I have a letter here on what appears to be Legal Services Corporation stationery signed by you—purportedly signed by you, saying, "Dear Congressman, please accept the attached cocktail parasol as a small token of my thanks to Congress for increasing the Legal Services Corporation budget by \$17 million last year. Thanks to the generosity of Congress and the American taxpayer, the legal services program has been able to fight poverty by holding meetings at expensive beach front resorts—" and it goes on in that vein.

Is this your signature on this letter, sir?

Mr. MCKAY. No, it is not.

Mr. NADLER. Is this letter a fraud?

Mr. MCKAY. It is.

Mr. NADLER. Thank you.

Mr. MCKAY. I think it is a bad joke, myself, but I think it is a fraud.

Mr. NADLER. Thank you.

Mr. GEKAS. The time of the gentleman and the extra time have both expired.

The gentleman from Ohio is recognized for 5 minutes.

Mr. CHABOT. I thank the chairman for yielding.

I don't want to beat a dead horse here, but we keep hearing statements which are directly in conflict with each other. We have been hearing that these numbers don't mean anything, Congress doesn't count on them, we never said Congress counts on these numbers, they don't matter; and then we've got a direct letter that you've sent out to these folks saying, "This is an integral part of Congress determining the appropriate funding for LSC." It's almost like Alice in Wonderland here.

You know, if we understand plain English, what you're saying is, "The numbers are important, that they ought to be accurate, Congress relies upon these numbers. Tell the truth." I mean, that's where—do you disagree with that in any way?

Mr. MCKAY. I think the assumption, Congressman, is inaccurate, with all due respect.

Mr. CHABOT. What is inaccurate?

Mr. MCKAY. The assumption that you are making, if I may indicate.

Mr. CHABOT. Which assumption am I making?

Mr. MCKAY. Well, I think the assumption is this, that the statistics that are being gathered are a principal means to determine unmet legal need, and that, I think, is what the requirement of the LSC Act is.

I am a proponent of the Results Act, and I think the real important value in case statistics is going to be to determine what performance measures are made with regard to the effectiveness of the agency, and I believe that our principal obligation is to make sure that we develop a system which indicates the ability of the Legal Services Corporation to meet its statutory duties.

Mr. GEKAS. Would the gentleman yield?

Mr. CHABOT. I'd be happy to yield.

Mr. GEKAS. Well, aren't you saying that when you received the report of 37,000 cases when only 17 were really actually worked on, that you felt that results showed that 37,000 cases showed production on the part of a particular grantee? That's part of this whole thing.

I'm really worried about all this. I'm desperately worried that the number of cases which you are minimizing is, contrary to that, considered very important by Members of Congress.

Mr. MCKAY. If I may, Mr. Chairman, I agree with you that these are very important statistics and that we have an obligation to get them accurate. But let me tell you how complicated it is.

Mr. GEKAS. Excuse me. In going back to that question, you stated that the principal thing that you go by is results.

Mr. MCKAY. Yes.

Mr. GEKAS. And I'm saying to you: what results do you have in front of you except the reports of the grantees that 37,000 cases were processed—

Mr. MCKAY. Let me, if I may answer that—

Mr. GEKAS [continuing]. Unless you have a copy of each file to determine the results, and then, if that's true, then, of those over-reported cases, you should have been able to swipe away those that were just telephone calls that were referred to the Internal Revenue Service.

Mr. MCKAY. Well, we've done a fair amount of work to try and understand the root of this problem, short of going in to look at every single file, which I'm sure that members of the committee are aware we cannot do.

But, for example, on the numbers that you cited, Mr. Chairman, it may not be quite as simple as to say that the 37,000 should have been 15,000 and, therefore, no service was provided.

Some examples would include, for example, a battered woman who may call in and say, "I am being beaten. He beat me yesterday. He's going to be home in an hour, and I think I'm going to be beaten again."

The attorney on that help line may well say, "You need to call the following number," which is the number for a shelter. That does not qualify as legal advice, but I believe it is a service being provided by our help line.

Mr. GEKAS. You changed the IG's result and the GAO's result by saying, "Well, 2,442 of those, they were mistaken because some service was provided, even though it was minimal in answering the telephone." But still we are relying on statistics. I'm sorry.

Mr. CHABOT. I was also—that's okay. Regaining or reclaiming my time, I was also under the impression that a previous witness said that when legal advice is given over the phone that that is counted as a case.

Mr. MCKAY. If legal advice is given, but the example I just gave, Congressman, would not qualify as a case. If we—you see, this was the category of "referred after legal assessment." Some of our programs, due, in part, to our poor guidance at LSC, tried to find a way to count that service that they were providing in making that referral, and so they selected the category of "referred after legal assessment."

Mr. CHABOT. All right. Let me follow up—

Mr. MCKAY. And our guidelines require that that be legal assistance and legal advice, which wasn't given. I believe it was a service.

Mr. CHABOT. I've got a limited amount of time, so let me follow up here.

Mr. MCKAY. I'm sorry.

Mr. CHABOT. Don't the Legal Services Corporation grantees actually have an incentive in overstating their cases because they also receive funding from State, local, and private sources in which they also use those numbers, and the LSC always emphasizes with us, when they are asking for funding and determining what the appropriate level of funding—I mean, they use these numbers every time.

So, I mean, I just think it is disingenuous to say that the numbers really don't matter.

Mr. MCKAY. That's not my statement.

Mr. GEKAS. Without objection—

Mr. CHABOT. Well, they're not significant in funding.

Mr. GEKAS. Without objection, the gentleman is accorded at least 42 more seconds.

Mr. CHABOT. All right.

With my 42 more seconds, let me just follow up with a couple other things.

Whose decision was it not to report the case reporting problems to Congress?

Mr. MCKAY. I don't believe that any witness has said that, Congressman. I believe that the question with regard to the audits was answered by the inspector general and by the representatives of the GAO, and I think the inspector general pretty clearly laid out the status of his audits and the auditing guidelines under which he was operating, as well as the time line.

If you'd like me to comment on any part of that, I'd be happy to.

Mr. NADLER. Would the gentleman yield?

Mr. CHABOT. I'm out of time.

Mr. NADLER. I'd ask unanimous consent to—

Mr. CHABOT. I'll ask unanimous consent for 30 seconds to yield to the gentleman.

Mr. GEKAS. Without objection.

Mr. NADLER. Thank you.

I think the testimony was consistent today from everybody that the concern that there was no statutory requirement to report any of this to Congress, and, in fact, from 1990-something to 1996 or 1997 nobody bothered reporting anything, nobody asked for it in Congress, that the inspector general decided to do audits on his own and that he was going to report those audits when they were finished, and they did report those audits when they were finished, and that the time that some people are focusing on when they hadn't reported them, they were not finished. It would have been improper, under auditing standards, to report anything at that point, and therefore there was no decision by anybody not to report anything.

I yield back.

Mr. CHABOT. I yield back the balance of my time.

Mr. NADLER. I thank you.

Mr. GEKAS. The time of both gentlemen has expired.

The gentleman from Massachusetts is recognized for 5 minutes.

Mr. DELAHUNT. My biggest concern is the percentage—I think it was Mr. Nadler who referred to the American Heritage report—that LSC is only meeting 5 percent of the legal needs of the poor in this Nation. I mean, that really concerns me.

Can you give us—and I think it was you, Mr. McKay, who indicated that to gauge the unmet needs we need an update.

I think it might be timely for this subcommittee to ask the GAO to make that determination, to go into the field and give this subcommittee, which has jurisdiction over the LSC, an idea, to quantify, if you will, the unmet needs of the poor, in terms of access to legal services.

Do you disagree with that 5 percent that was mentioned by Mr. Nadler and coming from the American Heritage Report?

Mr. MCKAY. The number that we typically hear is about 20 percent of civil legal needs are being met through a combination of Federally-funded legal services, local—

Mr. DELAHUNT. What's happening to the other 80 percent of these people—

Mr. MCKAY. Congressman, they are—

Mr. DELAHUNT [continuing]. Who are being denied access to justice?

Mr. MCKAY. They are going back to receive more abuse, physical violence. They are going back thinking that there is no justice for them when they are scammed by telemarketers. They are going back and realizing that they can be abused in their nursing homes and that no one is going to stand up for them. That's the problem. That's the scandal.

Mr. DELAHUNT. My colleague from Ohio indicated that there are State and local bar associations that fill a certain need. Do you have any measurement in terms of the role that individual attorneys or bar associations play in terms of meeting that unmet need?

Mr. ERLNBORN. If I might partially answer that question?

Mr. DELAHUNT. Sure.

Mr. ERLNBORN. There is something called "private attorney involvement" in our grantees' programs, and that is an effort to get attorneys in the area to make themselves available to take some of the cases that cannot be held because of the shortage of funds—cannot be handled by the local program.

Let me give you one example of how the Legal Services dollars really provide an awful lot more than you might think.

I conducted a hearing as chairman of a commission appointed by the Legal Services Corporation, and we were looking at the problem of rendering legal assistance to H2A workers, primarily. It was a little broader than that. And we had an attorney who was a partner in a large San Francisco law firm who was testifying, and he testified as to how his law firm, in this high-rise in San Francisco, was rendering legal services to the H2 workers out in the fields.

I said, "What would happen if the Legal Services program out in the field was prohibited from being involved with these H2A workers?" And he said, "Without them to conduct the intake, to determine they were eligible, to speak to them in their own language and to get their depositions and get things signed, and so forth, we would not provide any services at all."

And I said, "How much did you provide last year, your firm?" It was a large firm. It still shocked me—\$13 million in services from that one firm, which would not have been given to deserving eligible clients if Legal Services was unable, for whatever reason—lack of resources or prohibition—to render the service they do.

And you can read that as happening one after another throughout the entire United States. The fact that Legal Services is in that area means that a lot more is being done than just what they can do with their appropriations.

Mr. DELAHUNT. Do you have any idea—could you provide us an estimate in terms of how many private sector dollars, if you will, are leveraged by LSC? Have you ever done a study?

Mr. MCKAY. I think some have, and we can get you what we have, Congressman.

[The information referred to can be found in the appendix.]

Mr. MCKAY. I believe that we have 150,000 private attorneys on private panels administered through Legal Services offices.

Mr. DELAHUNT. Just one final question, Mr. Chairman.

Mr. GEKAS. Without objection, the gentleman has an additional 30 seconds—42 seconds.

Mr. DELAHUNT. But I guess my final question is, in terms of meeting the needs of the poor, as defined under the act—and I'm pleased to meet you, Mr. Erlernborn, and you did great work while you served here in Congress, but is there a vacuum somewhere between the private sector, State agencies, local agencies, and the LSC? Are we meeting the needs of the poor in terms of access to the legal system, or is there a space there that is being unmet?

Mr. MCKAY. I believe the answer, Congressman, is that across the board we are not meeting the legal need. And let me draw your attention to one specific area, and that is geographically.

The assumption that volunteer lawyers or others will provide legal services just does not apply in rural America. It does not apply in the colonias along the border between Texas and Mexico. It does not apply out in the fields in California or on St. Lawrence Island, Alaska, and in certain neighborhoods that I'm sure that members of the committee could identify where the high-rise attorneys who might be in a position to provide pro bono help simply aren't going to be.

In those places, the last chance for a citizen who has substantially been denied justice is the Legal Services office, the local legal aid office, whose resources are already severely strapped, and I think that is the incorrect assumption made by the Heritage Foundation and others who have said that this is a matter that should be undertaken by the private bar.

Mr. DELAHUNT. Thank you.

Mr. GEKAS. The time of the gentleman has expired, and the time of the panel has expired.

We, as always, appreciate the special effort you make to appear before the committee. We thank you and we'll be in touch. We certainly will be in touch.

Mr. ERLERNBORN. Thank you.

Mr. MCKAY. We look forward to that. Thank you.

Mr. GEKAS. All right.

We now invite the final panel to approach the witness table, made up of John Pickering, a partner and senior counsel at the Washington law firm of Wilmer Cutler and Pickering. He appears today on behalf of the American Bar Association, where he is a member of the Standing Committee on Legal Aid and Indigent Defendants.

Over the course of his legal career, Mr. Pickering has received numerous honors and awards, including the Justice Potter Stewart Award from the Council for Court Excellence, the Brennan Award from the District of Columbia Bar Association, and the Pro Bono Award from the NAACP Legal Defense and Education Fund.

After obtaining his undergraduate and law degrees from the University of Michigan, Mr. Pickering served in the U.S. Naval Reserve from 1943 to 1946. He began his legal career as a law clerk to the U.S. Supreme Court Justice Frank Murphy.

Virginia Thomas is a senior fellow in government studies at the Heritage Foundation, where she studies ways to make the Federal Government more accountable through increased use of perform-

ance measures, greater Congressional oversight, and identification of Government waste and mismanagement.

Prior to her current assignment, Ms. Thomas was the committee liaison for House majority leader Dick Armey. In that capacity she was responsible for improving Congressional oversight of the Executive Branch and headed a special leadership project to implement the 1993 Government Performance and Results Act.

Ms. Thomas has also served as a senior policy coordinator for the House Republican Conference Committee, and as a deputy assistant secretary for Congressional and intergovernmental affairs at the Department of Labor.

In the private sector, Ms. Thomas was a lobbyist for the U.S. Chamber of Commerce for 4 years.

A native of Nebraska, she obtained her law degree at Creighton University.

They are accompanied at the witness table by Kenneth Boehm, chairman of the National Legal and Policy Center, an organization dedicated to promoting ethics and accountability in Government.

Prior to joining the center, he was counsel to the Legal Services Corporation's board of directors. He has also served as chief of staff to Congressman Christopher Smith of New Jersey, vice president of Northern Virginia Law School, and chairman of Citizens for Reagan.

His other professional credentials include service as a prosecutor and award-winning radio talk show host.

We will begin by stating the old saw that the written statements will be ordered placed in the record without objection.

We'll begin with Mr. Pickering.

STATEMENT OF JOHN PICKERING, WILMER CUTLER AND PICKERING, MEMBER OF THE STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, AMERICAN BAR ASSOCIATION

Mr. PICKERING. Thank you, Mr. Chairman. I am John Pickering, a lawyer in private practice with the Washington, D.C. law firm of Wilmer Cutler and Pickering.

I submit this testimony on behalf of the American Bar Association at the request of our President, William Paul, who is in Europe at the present time on Association business, to state the Association's views with respect to the operations of the Legal Services Corporation and its importance to ensuring equal justice for all.

We appreciate this opportunity to submit the views of the American Bar Association, and also the interest which the subcommittee has shown in trying to get the facts regarding the Legal Services Corporation's case service reporting statistics.

As you know, the ABA has been a strong supporter of the Corporation from its creation, when it was done by a bipartisan majority and signed in the Administration of President Richard Nixon, as has been pointed out.

I testify today in two capacities—first, as a member of the ABA's Standing Committee on Legal Aid and Indigent Defendants, which serves the ABA by examining issues relating to the delivery of civil legal assistance and criminal defender services to the poor. I also testify today based on my direct personal involvement in the provi-

sion of legal services for the poor by State and local bars and by the private bar. I formerly chaired the American Bar Association's Commission on Legal Problems of the Elderly, and to this day I continue to represent on a pro bono basis low-income elderly residents of the District of Columbia.

My firm and I have long been involved in providing pro bono legal services for the poor and the elderly. We have consistently ranked among the top 10 law firms in the country in providing this. We have a commitment that 10 percent of our total effort goes to pro bono work and serving the poor.

Last year, my firm received the ABA's Pro Bono Publico Award, and just last month I was awarded the American Bar Association's Medal, its highest award, which was given in recognition of the leadership role my firm and I have shown in providing legal services to the poor and the elderly.

Today, I want to emphasize what I said in my acceptance speech when I received the ABA Medal.

Despite the efforts of my firm and many others throughout the country, and the American Bar Association's law firm pro bono challenge in which over 100 of the largest law firms in the country have signed up, pledging either 3 or 5 percent of their total effort to serving the legal needs of the poor—despite that challenge and the efforts of many other individual attorneys throughout the country—the legal problems of the poor simply cannot be addressed without a strong and well-funded Legal Services Corporation.

I speak from my experience both nationally in the American Bar Association and locally here in the District of Columbia, where I have served as president of the Bar and president of its Bar Foundation.

Legal Services Corporation is absolutely vital to the provisions of legal services by our legal service providers in the District of Columbia. And, even with all of this effort, where the legal profession contributes more pro bono hours than any other profession I know of in the country and we can be very proud of that record—we hear a lot of criticisms about what the lawyers in America are doing, but they are doing their part in meeting the pro bono needs—but, even with that, and with the Legal Services providers who are funded by the Legal Services Corporation and the Corporation, itself, the best estimate is that at best only 20 percent of the legal needs of the poor and the elderly are met. That is the estimate based on an ABA survey done several years ago.

The Legal Services Corporation is a model of a private/public partnership, funding locally-operated programs which set local priorities and which leverage millions of dollars of other kinds of other services and in-kind services.

I might interject that Hurricane Floyd gave an example of some of the work the Legal Services Corporation does. For example, the North Carolina Legal Services program anticipated and prepared for the onslaught of new clients because of enormous flood damage. Most of those people who suffered were without insurance, will have to depend on Government aid and personal assets to rebuild their homes. Also, many middle class residents will now become income eligible for legal services, since they no longer have jobs.

Communities in eastern North Carolina are also particularly hard hit, since the residents there are often poor and low income. As the people in North Carolina have told us, the distance from middle class to poverty is only one hurricane or flood or tornado away and legal services are there to help.

I might add, Mr. Chairman, that you and I were somewhat victims of Hurricane Floyd. We were scheduled to appear at your hearing on your Federal agency compliance bill on September the 16th, which was postponed because of Floyd.

It's because of this kind of work that the Legal Services program carries on that it has been repeatedly endorsed by the American Bar Association, by State and local bars, by religious leaders, and, most importantly, by the corporate chief executive officers and the general counsels of Fortune 500 companies who realize that their employees have to be assured that our system is fair and open to everyone. And it is also supported by bipartisan majorities in both the House and the Senate, and by majorities among the American people.

Now, the Legal Services Corporation is a large operation with many grantees. It is inevitable some mistakes are going to be made, and you've been hearing about the problem of the case service reports.

I would urge, however, that you not over-emphasize or use that to make a whipping boy of the Corporation, for several reasons.

The Corporation, itself, and its inspector general identified the problem and surfaced it publicly. The Corporation is working to correct the problem. A study by the General Accounting Office has provided useful and constructive suggestions for improving the system. It has found no evidence of fraud, abuse, or manipulation of numbers for political gain, and it has made recommendations which the Corporation has pledged to undertake.

Even with the revised case load—

Mr. GEKAS. The gentleman is extended a few more seconds, 42 seconds or so.

Mr. PICKERING. I'll just need two or 3 seconds.

A revised case load figure for 1997, as I understand it, is 1.1 million cases handled, instead of the previous report. That means the Federal Government is getting legal services for the poor at a cost of about \$275 a case. With present legal fees, that's a remarkable bargain, indeed.

This program, Mr. Chairman, I submit, deserves the strong support of the Congress and the American people. Without it, the promise in our Pledge of Allegiance of liberty and justice for all rings hollow, and the most vulnerable segments of our society, the poor and the elderly, will be denied access to justice, in large part.

Thank you.

Mr. GEKAS. We thank the gentleman.

[The prepared statement of Mr. Pickering follows:]

PREPARED STATEMENT OF JOHN PICKERING, WILMER CUTLER AND PICKERING, MEMBER OF THE STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee:

I am John Pickering, a lawyer in private practice with the Washington, D.C. firm of Wilmer, Cutler & Pickering. I submit this testimony at the request of the Presi-

dent of the American Bar Association, William G. Paul of Oklahoma City, Oklahoma, to voice the Association's views with respect to the operations of the Legal Services Corporation and its importance to ensuring equal justice for all.

The American Bar Association, the world's largest, voluntary professional organization with more than 400,000 members, is the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law.

I testify today in my capacity as a member of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. This Standing Committee serves the ABA by examining issues relating to the delivery of civil legal assistance and criminal defender services to the poor. It maintains close liaison with state and local bar and legal aid/defender leaders, providing information and developing policy on civil legal aid and indigent defense. It advocates for and works to ensure the availability of legal aid and defender services for indigent persons through a variety of activities and projects.

I also testify today based on my direct, personal involvement in the provision of legal services for the poor. I formerly chaired the ABA Commission on Legal Problems of the Elderly and, to this day, I continue to represent on a *pro bono* basis low-income elderly residents of the District of Columbia. My law firm also wrote the *amicus curiae* brief on behalf of AARP in support of Interest on Lawyer Trust Account (IOLTA) programs in *Phillips, et al. v. Washington Legal Foundation, et al.*, 118 S.Ct. 1925 (1998).

My firm and I have long been involved in providing *pro bono* legal services for the poor. Last year, my firm received the ABA's *Pro Bono Publico* award and just last month I was awarded the ABA Medal, the highest award given by the ABA, in recognition of my leadership role in providing legal services to the poor and the elderly.

Today, I emphasize what I said in my acceptance speech when I received the ABA Medal: despite the efforts of my firm and others throughout the country, the legal problems of the poor cannot be addressed without a strong, well-funded Legal Services Corporation.

THE LEGAL SERVICES CORPORATION PLAYS A VITAL ROLE IN THE JUSTICE SYSTEM

For a quarter of a century, the Legal Services Corporation has been a lifeline for Americans in desperate need. For poor Americans, LSC-funded legal services programs have been there at times when they had nowhere else to go.

- For a 20-year-old, battered wife and mother of three small children, Alabama Legal Services obtained a protective order against her abusive husband and represented her in court when the husband filed for divorce in another county. Legal Services represented the wife in both counties and successfully obtained the support she needed to obtain a drivers' license, employment and custody of her children. The husband was also ordered by the court to pay \$542 per month in child support.
- For an ill, elderly North Florida woman confined to a wheelchair, legal aid prevented foreclosure on her house after she contracted with an unscrupulous home improvement company. The contractor promised to make her bathroom wheelchair-accessible and take care of her home repair needs. The contractor never finished the job and left her \$27,000 in debt on a house that was close to fully paid.
- For a 47-year-old woman in Wheeling, West Virginia, funding from the Legal Services Corporation literally saved her life. Without help from the Wheeling legal aid office, which receives LSC funding, her Medicaid eligibility would have been withdrawn—and that could have been fatal for this impoverished dialysis patient.
- For Lucy Johnson, 55, of Syracuse, New York, the local LSC-funded program helped at a time when the power company planned to cut off electricity to her building because the building management failed to pay its own bills and filed for bankruptcy. "The building is home to many elderly and asthmatic patients who depend on respirators and other medical equipment, and they wanted to know how they would survive without electricity," she says. Legal Services of Central New York worked out a plan to keep the electricity on and ensure the utility was paid.
- "I had, literally, run for my life. I was battered and bruised. I had taken my kids and myself and fled to a woman's shelter. We had nothing. . . . I was in fear for my life. Who would help a woman who had nothing but two kids?

That's when I found Legal Aid," says a client of Legal Aid of Western Oklahoma.

These are just a few of the millions of people legal aid lawyers help every year. The Corporation, formed in 1974 with bipartisan Congressional support and the endorsement of the Nixon Administration, was created to ensure that all Americans have access to a lawyer and the justice system for civil legal issues regardless of their ability to pay. Today, this is more important than ever. Despite the booming economy, the need for legal services by low income Americans has never been greater. More than 35 million Americans continue to live in poverty, and another 10 million live on the brink of poverty, making more than one in five Americans eligible for LSC-funded representation. Studies show that only 20 percent of the legal needs of the poor are being met.

At the same time, in a recent national public opinion survey, 47 percent of Americans stated that the legal system treats minorities and the poor unfairly. Nearly 90 percent of respondents thought affluent individuals and corporations had the upper hand in court. The ABA is very concerned that the current perception of bias will eventually erode confidence in our system of justice. The ABA is focused on expanding access to legal services, through *pro bono work* and efforts to increase public understanding and perception of the justice system. In May 1999, delegations from all 50 states, led by their respective chief justices, met in Washington to address the issue of ensuring public trust and confidence in the justice system. A key factor in strengthening public trust and confidence is ensuring access to our justice system for all Americans. The Legal Services Corporation plays a vital role in this effort.

The Corporation has bipartisan support in Congress and across the nation. On August 4, 1999, for the fourth year in a row, a strong bipartisan majority, including you, Mr. Chairman, and a majority of your Subcommittee, voted to restore funding for LSC after its budget had again been slashed by the House Appropriations Committee. The business community supports the Legal Services Corporation. When LSC was threatened with termination in the 1980s, the CEOs of Fortune 500 companies banded together and informed Congress just how important access to the justice system was to their employees. Again this year, a group of Fortune 500 general counsels lobbied Congress to increase funding for LSC after its funding had been cut by the House Appropriations Committee. These general counsels represent leading American corporations, including Shell Oil, Eastman Kodak, Georgia-Pacific, Colgate-Palmolive, General Motors, Ford Motor Company and Dupont.

Americans strongly support spending their federal tax dollars to provide legal assistance to low income individuals and families. An August 1997 Louis Harris poll reported that 70 percent of those queried believed federal dollars should be used to pay for civil legal aid to the poor in such cases as child custody, adoption and divorce. A June 1999 Harris poll reported that 80 percent of those surveyed believed federal funds should pay for legal assistance to low income victims of domestic violence.

LSC-funded programs make an important difference in the lives of countless numbers of low-income individuals and families. While LSC enjoys wide bipartisan support in Congress and across the nation, a vocal minority seeks to eliminate or reduce program funding. Over the past few months, the Legal Services Corporation and several of its local program grantees have again come under attack, in particular about the accuracy of the case reporting statistics provided to Congress.

LSC'S CASE SERVICE REPORT (CSR) SYSTEM

Before commenting on LSC's efforts to improve its Case Service Report (CSR) system, I would like to address some of the inaccuracies circulating about LSC's CSR statistics. These statistics provide a snapshot of the number and types of cases LSC grantees handle during a given calendar year. Each of some 260 local grantees provides this information to LSC, which in turn, compiles the data and conveys these statistics to Congress as part of LSC's annual budget process.

Last year, the LSC's own independent Inspector General (IG) conducted audits which indicated that the 1997 statistics provided to LSC by a selected group of programs may have been inaccurate. The LSC IG, in accordance with the Inspector General statute, timely reported his findings to Congress. Thus, LSC had identified this problem on its own and was taking steps to correct it. Unfortunately, LSC's opponents used this situation to grossly distort what really happened. LSC opponents argued that the inaccuracies in the case service reporting were a deliberate attempt to mislead Congress.

A subsequent audit by the General Accounting Office (GAO) verified the results of the LSC IG's own audits. Results showed that while there were problems with the CSR system and the statistics that system produced, there was no evidence of

fraud, misuse of federal resources, or deliberate overcounting of cases by any programs. Local programs have no financial incentive to overstate the number of cases handled because local program funding is not tied to the number of cases handled or reported. Funding is based solely on the low-income population living within a service area.

The errors with the CSR statistics stem from the LSC's 20-year-old case reporting system, which the current LSC management inherited from its predecessors and has not yet had time to fully examine and reform. As you know, in 1996, Congress made significant changes in the scope of and the delivery of legal services provided by LSC. Over the past several years, LSC President John McKay, the Board of Directors and LSC staff have worked diligently to implement these changes in the Corporation mandated by Congress.

Inaccurate reporting of information by some local programs is an appropriate concern—not only for Congress but also for the Corporation. However, it is important to note that it was the Corporation that identified this problem and brought it to the attention of Congress. While more needs to be done, it is clear that the Corporation is moving expeditiously to clarify CSR guidelines for its program grantees.

The Legal Services Corporation is desperately needed. I urge the Subcommittee not to overemphasize a minor reporting problem that has no impact on LSC's funding or the service provided to clients across the country. Regardless of the number of cases reported, millions of clients are being served, while millions more must be turned away because of inadequate funding. It would be overreacting to reduce or eliminate funding for this program when the combined efforts of the legal services programs, the private bar and countless individual lawyers are only able to serve 20 percent of the legal needs of the poor.

RECOMMENDATIONS FOR CHANGES TO THE CSR SYSTEM

The House Appropriations Subcommittee on Commerce, Justice, State and the GAO have examined LSC's CSR system and have made recommendations that include revising the system itself, providing more training to legal services providers who must comply with the CSR system, and changing procedures to ensure the uniform collection of data and reporting of statistics.

In its report to accompany the FY 2000 spending bill, the House Appropriations Subcommittee on Commerce, Justice, State directs the Corporation to make improvements in the accuracy of these submissions a top priority. The Subcommittee further directs the Corporation to provide additional guidance to grantees on the definition of a case, as that term is used in the case service reports. Finally, the Subcommittee would gradually advance the deadline for LSC to submit its annual case report to Congress, from July 1 to May 1 by the year 2001.

The practice of law and the delivery of legal services to the poor have changed substantially over the past 20 years, and the ABA supports LSC's efforts to adapt its case reporting system and other guidelines accordingly. Consistent with the request of the House CJS Appropriations Subcommittee and the recommendations of the GAO, the ABA encourages LSC to make appropriate changes in its CSR guidelines, to provide clear information to grantees on reporting criteria and to more accurately capture the type of services provided to program clients.

The CJS Appropriations Subcommittee directed LSC to differentiate between the number of cases disposed of by telephone referrals to private attorneys and the number disposed of by entry of a settlement agreement or a court judgement. The ABA endorses such a differentiation because, while a telephone referral may or may not rise to the level of a "case," it is nevertheless a valuable service provided to a constituent.

As the CJS Appropriations Subcommittee notes, not all matters end up in court, thanks to legal services intervention. Legal services programs encourage the swift resolution of disputes with minimum conflict; only about 10 percent of matters handled by programs are resolved through litigation. The CSR system must recognize and count as a case all such matters, whether or not they end up in litigation.

Many LSC grantees are also adopting new approaches to using their limited funding to serve the maximum number of clients. Some are using advice "hotlines" or other innovative new approaches to provide service to more clients. The CSR system should be designed to capture information about services provided through such new delivery techniques, with appropriate safeguards to ensure that callers are eligible for service and receive assistance with a specific legal problem from a qualified employee.

The ABA also encourages LSC to clarify guidelines for determining when a client has more than one case. As in the private practice of law, it is commonplace for one low-income client to bring more than one case to a legal services office, e.g., a family

law client may present several distinct legal problems. The guidelines should provide clear direction concerning when each matter should be considered a separate case and should be counted accordingly.

While the ABA supports LSC's efforts to update its CSR, we caution Congress and LSC not to create an overly burdensome reporting process. Having accurate data is very important. However, the local legal aid programs are already severely underfunded and the lawyers overwhelmed with clients. The lawyers in the field must continue to concentrate on serving the poor; it would be a disservice to the clients to require legal aid lawyers to spend substantially more time filling out forms and less time actually practicing law.

OTHER LSC INITIATIVES TO IMPROVE PERFORMANCE AND ACCOUNTABILITY

We believe that the Corporation is committed to carrying out its mission, as mandated by Congress. Beginning in 1996, Congress imposed several restrictions on the type of cases legal services programs could accept and on the clients they could serve. The Corporation has fully implemented those restrictions established by Congress, including shutting down programs found not to be in compliance, and has instituted several initiatives that have significantly increased its performance and accountability.

For the past several years, LSC has devoted itself to enforcing the 1996 restrictions, as well as fostering statewide planning processes designed to increase efficiencies in the delivery of legal services to the poor in each state. The ABA supports LSC's efforts to encourage state planning for improving the delivery of legal services to the poor and has encouraged each state and local bar association to participate in the examination of systems and structures for providing legal services to the poor, and in ensuring that the state is making the most effective use of available resources.

The Corporation has accomplished many things over the past several years: enforcing Congressional restrictions and successfully defending the constitutionality of the restrictions when challenged, structuring a new competitive bidding process, and engaging in comprehensive state planning. Yet, LSC's leadership administers and monitors the distribution of its federal appropriation with a very lean staff and budget—only 3% of its annual appropriation is used for national administrative costs. The remaining 97 % is allocated to separate local, non-profit corporations around the country, which provide direct services to clients.

CONCLUSION

Since 1996, LSC's leadership has worked closely with Congressional leadership in both the House and the Senate to ensure that the Corporation and its local grantees are focused on meeting the basic legal needs of the poor.

The Legal Services Corporation is a model private-public partnership. The core federal funding provides for client intake and screening, referral of cases, handling emergency matters, training *pro bono* lawyers, and handling cases when no private lawyer can do so. LSC leverages and facilitates the utilization of private resources—both in-kind, *pro bono* services and private funding. LSC, through its local programs, efficiently delivers legal services to the poor, at the very cost effective rate of less than \$300 per case, even with the adjusted case service reporting figures.

Most important, we must not lose sight of the good work that LSC lawyers nationwide do in providing legal services to those in our society who are the most vulnerable and who may not otherwise have the benefit of legal assistance. The focus of LSC's efforts and those of Congress must remain on reducing the unmet legal needs of the poor. It is critical that we continue to improve the delivery of legal services for the poor and work for adequate funding for LSC so victims of domestic violence can get the help they need, patients can receive the health care they are entitled to and other poor people can obtain assistance with their basic legal problems.

Mr. GEKAS. We turn to Mr. Boehm.

STATEMENT OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND POLICY CENTER

Mr. BOEHM. Thank you, Mr. Chairman. Thank you, members of the subcommittee.

As we sit here today, at this point in time nobody has a real accurate number of how many cases were handled by Legal Services in 1997, 1998, and, as we now know from the report that just came

out 9 days ago from the GAO, they said, "In conclusion, we do not believe that LSC's efforts to date have been sufficient to fully resolve the case reporting problems that occurred in 1997."

So not only are our numbers wrong for the last 2 years, but there's not even good prospects that their efforts are going to solve it.

The facts here couldn't be more clear. LSC does have a duty to report the number of cases handled each year because Congress has asked for it each year. There's also reporting requirements in the LSC Act. And Congress relies on the accuracy of these numbers for a very good reason—they have no place else to go but to LSC to get this information.

Furthermore, it is the most significant performance statistic. You gave the quote from President McKay before. He says Congress deserves accurate figures and they rely on them. They do.

Look what Congressman Harold Rogers, who is the chairman of their Appropriations Committee, said just this year at their hearing when this issue arose. He said, "We do make our decisions based upon the volume of the load that is represented to us." He's their appropriations chairman. He was making his decisions, which are considerable for being the chairman of the Appropriations Subcommittee, based on the numbers of cases.

They have argued—and I have attended the last 10 Legal Services appropriations hearings the last 10 years. They have argued every single year based on case load. They have even said, "Give us 'X' number of dollars more, and we'll do 'X' number of cases more," based on cost per case, based on figures that we now know are fiction.

How did this happen? LSC in May gave a fact book, May, 1998, to Congress. "These are how many cases we did in 1997." They didn't think it was dishonest at the time. They thought those numbers were true. But, starting in June, July, and August 1998, these audits came in and other reports came in and examinations came in. There was a flood of information to the IG. These numbers are bogus by big amounts.

The AP story, when they talked to folks all around the country, said they looked at four programs, alone, and close to 70 percent of 73,000 cases were invalid. They found cases that were just imaginary, as with Florida Rural Legal, where they found 39,000 cases out of 44,000 just did not exist.

How could a program director have 44,000 open cases and not know there was actually 5,522 cases?

Now, maybe that's not fraud. It's certainly gross negligence. It's certainly—he doesn't know his attorneys are handling 5,000 or 44,000? And when asked he promptly says, "Oh, that number wasn't a real number," and gives the number of 5,500.

By the way, the inspector general said, when he was talking about a semi-annual report, Mr. Chairman, in answer to your question, that he couldn't put in his semi-annual report that he filed ending the 6-month period September, 1998, that there were all these major problems because he wasn't done his audits.

What about all the other reports like Florida Rural? That wasn't an audit. That was a phone call asking about the suspiciously high numbers. There was no reason why, when he had that question,

"Were there any significant problems, abuses, or deficiencies?"—that was the question—he said "None."

If it's not a significant problem, abuse, or deficiency when you find half to two-thirds of the cases you're looking at just don't exist, then what is a problem? When you find there's no cases? It just boggles the mind that that somehow covers.

There's worse information, and that is, in an IG e-mail to members of his staff in September 1998, he said, "The numbers provided to Congress were inadequate, inaccurate." He knew that the numbers provided in May, 1998, were wrong. So did Mr. McKay.

You would think, since Congress was relying on this fact book to decide how much money to give, they would go to Congress and say, "Look, we didn't know it at the time, but now we know it—these numbers are not accurate. Please reconsider. We're working on it," and so forth.

But they knew Congress was relying on inaccurate data. The actual final vote didn't come in August. That was just the House vote that Mr. Quatrevaux referred to. The final vote was October 21st, over a month after he said the numbers given to Congress were inaccurate.

He had a duty, as an IG. Mr. McKay had a duty, as the president of the Corporation, to Congress to just tell them the truth. "You're relying on inaccurate numbers." Instead, these numbers were bandied about in the floor debate. "Here's how many cases." And they knew, as they watched the floor debate, that these numbers were wrong. That simply is wrong. That's the problem here.

And, as for fraud, let me just say there are plenty of—we have a complaint pending now. A 20-year Legal Services veteran up in New York said he quit, 20 years on the job, he quit because every phone call to every secretary was being counted as a case. That was wrong. And he said they were doing it in order to puff up their numbers for LSC and their other funders. They get money from other sources. They use these numbers for competition or to keep competition backed off.

There are 101 motives to buff up your numbers. They do get their money based on the poverty population, but LSC gets its money based on these higher numbers, and when they go to private groups that's how they get their money, too.

This is exactly what it looks like. It is a problem at the local level with phony numbers. It's a problem at the LSC level with an IG and an LSC president who won't tell Congress they are relying on false numbers.

Hopefully, there will be steps taken to hold them accountable, as any Government agency should be held accountable.

Mr. GEKAS. We thank the gentleman.

[The prepared statement of Mr. Boehm follows:]

PREPARED STATEMENT OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND
POLICY CENTER

MORE UNACCOUNTABLE THAN EVER: HOW THE LEGAL SERVICES CORPORATION HID ITS
PHANTOM CASE PROBLEM FROM CONGRESS

My name is Ken Boehm. I'm Chairman of the National Legal and Policy Center (NLPC), a legal group which promotes open, ethical government through research, education and legal action. NLPC is one of the three groups which successfully sued in federal court to force the White House's Health Care Task Force to publicly dis-

close its documents and the identities of its members. Since 1994, NLPC has sponsored the Legal Services Accountability Project to document and expose abuses in the federal legal services program. From 1989 to 1994, I served in senior management positions at Legal Services Corporation and from 1991 to 1994 as Counsel to the LSC Board of Directors.

THE FACTS COULD NOT BE CLEARER

The facts in this case are crystal clear.

The Legal Services Corporation has a duty under the LSC Act to truthfully report to Congress how many cases are handled by the lawyers in the programs it funds.

Congress relies on the accuracy of those case figures because it has no other source of information about them except LSC.

LSC has always used the number of cases it handles as one of its main arguments when requesting additional funds from Congress.

In 1998, LSC provided its annual *LSC Fact Book* to Congress in May. The case totals LSC reported were thought to be accurate at the time by LSC officials.

Shortly thereafter, the LSC Inspector General's office began audits which revealed serious overcounting and exaggeration of case totals. Over the summer of 1998, LSC learned that tens of thousands of cases being claimed were either invalid or simply did not exist.

On August 3, 1998, LSC learned that Florida Rural Legal Services had claimed 44,993 open cases for 1997 but the program admitted that the true number was just 5,522 due to a claimed "computer error." The bottom line was that this single program had over 39,000 phantom cases and only 12% of its claimed open cases were valid.

By September 1998, the LSC Inspector General told the LSC Board that the audit of Legal Services of Northern Virginia found closed cases overstated by 13% and open cases by 68%.

Also in September the Inspector General stated in an e-mail to a member of his staff that "the numbers provided to Congress were inaccurate."

The final vote on LSC funding came on October 21, 1998 with Congress giving LSC a \$17 million increase in funding over the previous year.

By the day of the October 21 funding vote, LSC's President and Inspector General had known for months that the case statistics given to Congress in May were both false and inflated.

Both the LSC President and Inspector General knew that Congress was relying on the false case statistics in the debate over funding yet neither took any steps whatsoever to correct the false statistics.

The Inspector General even filed a Semiannual Report to Congress for the 6-month period ending September 30, 1998 in which he was required to identify "Significant problems, abuses and deficiencies" and his answer was "None."

In all, the audits and examinations of the IG's office found that approximately 100,000 of 150,000 cases were invalid, double-counts or simply did not exist.

Put simply: two out of every three cases examined were invalid or phantom cases. Every program examined had serious case counting problems.

Even after the October 1998 vote, Congress was never informed that LSC had found a serious pattern of wildly inflated case totals.

At the LSC appropriations hearing before the House Appropriations Subcommittee chaired by Rep. Hal Rogers, LSC provided voluminous material about its activities, but there was not one word in any of those documents about the serious case counting problem.

Only because a senior auditor on the Inspector General's staff team was so principled as to give up his job was the cover-up of the substantial case reporting problem revealed to Congress. This professional staff member with more than 20 years of experience in the federal government quit his position with the IG's office shortly before the LSC hearing in March 1999 in order to brief Rep. Tom Latham (R-IA-5) about the problems which LSC and its Inspector General were doing their best to hide.

Congressman Latham exposed the cover-up at the appropriations hearing and shortly thereafter Associated Press reporter Karen Gullo broke a national story disclosing more information about the substantial problems with exaggerated case totals.

The AP story disclosed that about 70% of the closed cases at programs in San Francisco, San Diego, Miami and Northern Virginia were not valid. The story also quoted Rep. Latham as questioning whether LSC IG Quatrevaux had adhered "to even the spirit" of his duties for not informing Congress of the problem.

The General Accounting Office investigation undertaken in the wake of the case reporting scandal confirmed substantial problems in 1997 case reporting by five of LSC's largest programs. The GAO determined that as many as half of the cases claimed in the major programs in New York were valid. The program in Puerto Rico had destroyed client case files in violation of a five-year case retention rule, making an accurate investigation there impossible. As with the audits and examinations of the LSC IG's office, every program examined had significant case reporting problems.

THE EXCUSES: AS INVALID AND FALSE AS THE CASE TOTALS

From the beginning, both the LSC President and Inspector General decided the best way to deal with the substantial case reporting problem was to cover it up.

A conscious decision was made not to look further at 1997 case problems and this decision was mentioned in a September 1998 e-mail sent by the IG to members of his staff. A planned audit of the San Francisco program to examine case reporting was scrubbed. Other audits were delayed. The September 1998 deadline to have examined ten programs for case reporting was repeatedly extended.

The LSC President took no steps whatsoever to inform Congress that the 1997 case numbers which LSC submitted to Congress in May 1998 were false and substantially inflated.

The LSC Inspector General made a conscious decision not to inform Congress that the single most important performance statistic for the legal services program had been found to be substantially flawed. The Inspector General's Semiannual Report to Congress for the period ending September 30, 1998 falsely stated that there were no "Significant problems, abuses or deficiencies" in the program found during the six-month period in question. Apparently audits and examinations showing that more than half the cases claimed were invalid or non-existent did not qualify as a "significant problem, abuse or deficiency." Nor was the fact that every program examined had serious problems.

The cover-up failed because the senior auditor who conducted the audits and examinations felt deeply that the cover-up was morally, professionally and legally wrong. His many years of distinguished service in the Inspector General's office at the Department of State and the Department of Defense had imbued him with the belief that auditors perform a valuable public service and have a responsibility of honesty that transcends political or bureaucratic considerations. The numerous awards, citations and promotions in his personnel file underscored his professional achievements as an auditor.

Personally, the senior auditor who first exposed the case reporting problem was very supportive of the legal services program. When he observed the LSC President and LSC Inspector General taking no steps to inform Congress or the public about the problems, he knew the information was too serious to be covered up. He made a decision that he would give up his employment in the Inspector General's office in order to expose the problem and to pursue other career opportunities.

This committee, the Congress and the public owe a debt of gratitude to this person for exposing both the substantial case reporting problems as well as the attempted cover-up.

This person was not alone in the LSC Inspector General's office in being appalled at the lack of honesty over the cover-up of the problem. Shortly after the March 1999 LSC appropriations hearing where Rep. Latham confronted LSC officials about the problem, another senior staff member of the LSC Inspector General's office resigned in protest over the IG's dishonesty.

The issue wasn't a political view about the legal services program. The issue was a dishonest cover-up of a substantial problem. And two senior professional staff members of the LSC Inspector General's office felt compelled to give up their employment rather than be a party to what they knew was dishonest.

When the cover-up was exposed by Congress and the Associated Press and the seriousness of the falsified case totals confirmed by the GAO investigation, LSC officials came up with a string of excuses, all of which have been shown to be as false and invalid as the case totals.

Excuse: The Overwhelming Majority of Programs Report Case Data Correctly

This was the claim LSC posted to its web home page when the Associated Press story broke in April. It is now, to use a Washington phrase, "non-operational."

The GAO investigation of the case reporting problems at five of LSC's largest programs has shown, to use GAO's own language, "substantial problems." Subsequent audits released by the IG's office have also shown serious and widespread case over-counting problems.

An investigation by LSC into a North Carolina legal services program which had illegally taken a trip to Mexico to recruit ineligible clients included a spot check of 25 client files. The 25 files of open cases were selected at random for general analysis. According to a letter dated September 18, 1998 by LSC President John McKay to the program:

"All 25 of these cases failed to have sufficient or any asset information, as is required by LSC regulations. 45 C.F.R. section 1611.6(a)"

The fact that 25 out of 25 randomly selected case files at a major program failed to have eligibility information speaks for itself. The letter cited above was obtained by National Legal and Policy Center under the Freedom of Information Act. None of the invalid cases at the North Carolina program are counted as part of the close to 100,000 invalid cases found by the Inspector General's Office or the approximately 75,000 questionable cases found by GAO investigators.

With each passing month, it has become clearer and clearer that the case overcounting problem in the legal services program is systemic and serious. Every program examined has had problems and when less than half of the claimed cases in the New York and Baltimore programs are shown to be legitimate, the problem is substantial.

Excuse: Congress Doesn't Rely on Case Totals to Decide on LSC Funding

The rebuttal to this claim comes from a statement made by the LSC President, John McKay, in December 1998:

"Case statistics play an essential role in the budget request and performance plan submitted by LSC to the United States Congress each year. Therefore, the reliability of case statistics submitted by programs to LSC is vital to obtaining continued Federal funding for Legal Services."

Ironically, the above statement, which was posted as "A Message From the President" on LSC's web page in December 1998, was made at a time that LSC had still not told Congress about the massive false case reporting. If Mr. McKay truly believed that case statistics played an essential role in LSC's budget request and their reliability was vital to continued funding, then why did he refuse to supply Congress with correct case totals?

Moreover, Members of Congress of both parties have long cited the case totals as an important performance indicator in trying to determine how much funding LSC should receive.

Rep. Hal Rogers (R-KY-5), Chairman of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, summed up the importance of case totals at the March 1999 hearing on LSC:

"We do make our judgments based on the volume of the load that is represented to us."

At the risk of stating the obvious, LSC cannot have it both ways. They cannot credibly argue that they deserve huge funding increases based on case totals and then when those very same case totals are found to be false and wildly inflated, argue that case totals don't matter.

Excuse: Legal Services Programs Have No Motive to Inflate Case Totals

To promote the view that this whole issue is just one of bookkeeping confusion, LSC has argued that Legal Services programs have no motive to exaggerate the number of cases they handle. LSC points out that programs receive their LSC funds based on poverty population of their service areas, not on the number of cases they handle.

While it is true that programs receive LSC funds based on the poverty population of the area they serve and not the number of cases they handle, there are numerous motives for legal services programs to inflate their case numbers.

- Most legal services programs receive funding from many sources other than LSC. Case totals are routinely used by programs as an argument to receive funds from state and local government as well as private foundations and charities. False case totals deceive funders into believing a legal services program is far more efficient than it really is.
- Case totals are a factor in the competition for LSC grants which Congress mandated in 1996. False, inflated case numbers have the effect of discouraging competition for grants and giving an unfair advantage to the program which has exaggerated its case figures.

- Puffing up case totals at the legal services program level helps LSC officials argue that Congress should provide more funds to LSC which directly benefits each program.
- Using phony case statistics reduces the cost-per-case, making programs artificially look more productive. Again, this practice unfairly deceives funders at the local, state and national levels.

Excuse: No Fraud Was Found

LSC has repeatedly claimed that neither the IG audits nor the GAO investigation found fraud.

The fact is neither the audits nor the investigation were charged with finding fraud yet both turned up reams of evidence that Legal Services programs knew or should have known that their practices were falsely inflating the case numbers.

- LSC's claim as to no fraud being found ignores the claim in a May 1999 letter to the editor of *Investor's Business Daily* by John T. Hand in which this lawyer who worked for more than 20 years for Westchester/Putnam Legal Services in New York stated he quit, in part, because the program "was counting every telephone call as a 'case' in order to build up numbers to report to the LSC and other funding sources. Consequently, hundreds, if not thousands, of reported cases were nothing more than referrals or other responses given by paralegals or secretaries." (emphasis added)

The motive for counting phone calls by secretaries as legal cases by this program is quite clear—it's to deceive LSC and other funders.

National Legal and Policy Center recently filed a complaint with LSC asking it to investigate the allegations of this 20+ year legal services veteran.

- When Florida Rural Legal Services was questioned as to its claimed 44,993 open cases, it reduced the claim by an astounding 39,471 cases to 5,522 cases on August 3, 1998. This represents the largest reduction in cases by a single program ever. The reason for the overcount was an unexplained "computer error." Neither LSC nor its IG made any attempt to audit or investigate this incredible overcount. Left unexplained is how any program director can rationally not know if the program's lawyers have 44,993 open cases or 5,522 open cases.

Rather than claim there was no evidence of fraud, a more accurate claim would be that LSC and its IG went to extremes to not investigate any misreporting of case figures which might have been fraudulent.

- LSC regulations have never allowed legal assistance to ineligible clients, the double-counting of cases or counting telephone calls by non-lawyers as "legal cases." Yet all of those clearly improper practices were found repeatedly by the audits of the IG staff and the investigation by the GAO. In a number of programs, the system was set up to allow for the types of overcounts just described to occur.

This institutionalized falsification of case numbers has not been properly investigated by either LSC or its IG.

- The claim that there was no fraud, that program directors simply overcount because the bookkeeping is just too complicated is an absurd argument on its face. Would LSC have Congress believe that the top officials of every major legal services program examined simply can't figure out how many cases his or her program handles? If that is true, how can they be relied upon to provide anything a little more complicated, like legal services?

Excuse: The IG Act and Government Audit Standards Prevented the LSC Inspector General From Reporting the False Case Statistics to Congress

- In attempting to deny responsibility for covering up the case problems from Congress, the LSC IG has suggested that both the IG Act and government auditing standards precluded him from informing Congress that the LSC case totals it was relying upon in late 1998 were false. Quite to the contrary, the IG Act explicitly calls for keeping "the Congress fully and currently informed about problems and discrepancies." Section 2 (3)
- Section 4 of the IG Act (Duties and Responsibilities) explicitly calls for an Inspector General to keep Congress "fully and currently informed by means of reports required by section 5 [semiannual reports] and otherwise, concerning fraud, and other serious problems, abuses and deficiencies."
- Any suggestion that some of the audits were incomplete thus the IG was not in a position to provide information about them also ignores the *Government Auditing Standards* (1994 revision):

REPORTING STANDARDS FOR PERFORMANCE AUDITS: TIMELINESS

Standard 7.6

"Auditors should appropriately issue the reports to make the information available for timely use by management, legislative officials, and other interested parties."

Moreover, some of the most egregious examples of case inflation did not come from audits. The Florida Rural Legal Services reduction of more than 39,000 cases was not the result of an audit but rather simply questions to the program about the suspiciously large number of open cases.

The San Francisco Legal Aid Foundation closed case totals were revised downward dramatically from 15,995 claimed for 1997 to 3,639—an astounding 77% drop—without being audited.

RECOMMENDATIONS

1. Congress should take steps to mandate an independent audit for both the 1997 and 1998 case figures. Neither the LSC nor its Inspector General have the credibility to do so and have a vested interest in covering up the extent of the problem.

2. Those officials who knowingly misled Congress and the public should be removed. Anything less sends the message that Congress will tolerate being provided with bogus case statistics and will tolerate cover-ups. Also, failure to hold the LSC President and Inspector General accountable for their actions sends the wrong message to others entrusted with public funds and responsibilities.

3. LSC-funded programs and officials who knowingly provide false case totals to LSC should be subject to the Federal False Statements Act and criminal penalties similar to those who use false statements to obtain funds from other federal programs.

4. This Subcommittee should reconsider the legal services reauthorization legislation sponsored by Chairman George Gekas which passed this Subcommittee in 1996. That legislation eliminated the Legal Services Corporation while block-granting funds for legal services to the states. In light of the failure of the legal services program to provide accurate information about their services to Congress and the failure of both LSC and its Inspector General to fulfill their oversight duties in this matter, Chairman Gekas' legislation for eliminating LSC represents a practical alternative to the present dysfunctional program.

Mr. GEKAS. We turn to Ms. Thomas.

**STATEMENT OF VIRGINIA L. THOMAS, SENIOR FELLOW IN
GOVERNMENT STUDIES, THE HERITAGE FOUNDATION**

Ms. THOMAS. Thank you, Mr. Chairman, and thank you for inviting us today.

My name is Virginia Thomas, and I'm proud to be here with the Heritage Foundation today.

Thank you for holding this oversight hearing. I think these kinds of hearings and investigations known as Congressional oversight are perhaps the single most important feature of the checks and balances our founders provided to ensure the accountability of the Federal Government for the taxpayers.

When oversight is conducted well, it leads to real and positive change, and I certainly hope that's the case today.

If ever there was a compelling need for improved accountability for the use of taxpayer funds, LSC is at such a point at this time.

Since 1974, taxpayers have spent \$6 billion on legal aid to the poor. And, thanks to the courage of a few principled individuals who worked at LSC only until they realized that they were part of a numbers charade, we all now know more about LSC's real performance, and that's why we're here today—the facts.

We all may disagree on policy options, but let's today focus on facts.

With new scrutiny, Congress found that LSC served less of the Nation's poor than LSC had previously boasted to the public. As recently as March 1999, when it was requesting a \$40 million increase in its budget, LSC claimed to have served 1,932,612 poor in 1997. Today, perhaps for the first time, we are learning that that number is more likely to be—we haven't seen the facts underlying this—1.1 million. That's a significant reduction of service for the poor that the taxpayers are paying for.

Every program and every grantee that has been audited has demonstrated serious miscounting or over-counting of cases.

The 1998 figures that usually come out in a fact book was due to the Congress in May of this year. It is 4 months late. You don't have those figures, I don't have those figures. I think that would be a revealing thing to have before Congress appropriates additional taxpayer dollars to the Legal Services Corporation.

One might be able to chalk the errors up to bureaucratic bungling had we not seen LSC take quiet, remedial steps to solve their case statistics problem in late 1998.

At the same time, no mention of this over-counting problem was made to Congress until publicity intensified after the appropriations hearing in March, 1999, when one Congressman started asking questions to get the facts, and then the AP story broke in April, and my lengthier "Backgrounder," which has been referred to many times—and I'm sure the Heritage Foundation is appreciative of the fact that it is being read so carefully—that documents that there is a time table as to when LSC knew they had a problem and when they revealed it to the Congress.

We do know that every single case audited has revealed problems.

When Congress passed the Government Performance and Results Act in 1993, it codified the desire of Congress to hold Federal programs accountable for their actual performance, not the good intentions of serving the poor or outcome measures, output measures that can easily distract people from understanding whether taxpayer dollars are, in fact, getting to the people we're trying to get help to.

Please look at just a few of the articles I've attached to my testimony to demonstrate the quiet but fundamental change happening in the way Washington is making decisions because of this tool, the Results Act.

It is a bipartisan, nonpartisan tool that helps restore public trust to Government by focusing on results and effectiveness of programs. It allows you and I to decide what's working, what's wasted, what needs to be improved, and what needs to be rethought.

The Results Act calls for objective, reliable data to define and measure program performance, and it seeks to hold programs and managers accountable for performance. It may be a novel concept for the Federal Government, but it is working at the State and local levels.

Performance-based Government is about restoring America's trust to Government based on results. The Legal Services Corporation, although not technically covered by the Results Act, has chosen to abide by it, so that means we can look at them to be responsive in the same way to these data requirements, but two things

can render the move toward performance-based Governments null and void.

First, the Results Act is useless unless Congress can rely on information provided to it. Without a doubt, LSC is not the only entity that is facing data reliability problems. In July, GAO provided Congress a massive report indicating that 20 out of 24 of the largest Federal agencies are going to have trouble verifying performance data to Congress next year when a performance report is due because of the GPRA law.

Second, the Results Act will be completely ineffectual if Congress provides increased money to non-performing agencies. If Congress does nothing in the face of poor or misleading performance, cynicism is likely to increase and the opportunity to restore public trust will be missed.

So what is to be done? The ball is in Congress' court.

No one would deny that the less-privileged in our society benefit significantly from legal assistance, but it is entirely unacceptable for Congress, the States, or private entities to continue to provide funding to LSC without having credible and accurate information on how current funds are being spent.

Just as you or I would alter our donations to a charity if we learned the charity had misrepresented its activities in its annual report, so, too, should Congress be equally vigilant with taxpayer dollars in the face of gross overstatements by an entity entrusted to serve the poor.

Thank you for your time.

Mr. GEKAS. We thank the lady.

[The prepared statement of Ms. Thomas follows:]

PREPARED STATEMENT OF VIRGINIA L. THOMAS, SENIOR FELLOW IN GOVERNMENT STUDIES, THE HERITAGE FOUNDATION

Thank you for holding this oversight hearing on the Legal Services Corporation (LSC), Mr. Chairman. With your permission, I will make only a short oral statement and would ask that my entire statement be entered into the record. I must stress, however, that the views I express are entirely my own, and should not be construed as representing any official position of The Heritage Foundation.

Everyday Congress makes decisions on how much scrutiny, how much money or how much reform is needed for existing federal programs within this \$1.7 trillion dollar federal government. Many people don't know that when Congress is not passing laws or spending money it is—or should be—holding hearings and conducting investigations that ask tough questions of federal agencies and their use of taxpayer dollars.

These hearings and investigations, known as congressional oversight, are perhaps the single most important feature of the "checks-and-balances" envisaged by the Founders to guide the direction—and therefore the accountability—of the federal government and its many agencies and endeavors. And when oversight is conducted properly, oversight of federal agencies can lead to real and positive change.

LSC's Performance Data Collapsing Under Scrutiny

If ever there was a compelling need for improved accountability for the use of taxpayer funds, LSC is such a case at this point in time. Since 1974, taxpayers have spent \$6 billion on legal aid to the poor. Thanks to the courage of a few principled individuals who worked at LSC only until they realized that they were part of a numbers charade, we all now know more about LSC's real performance.

With new scrutiny, Congress found that LSC served less of the nation's poor than LSC had previously boasted to the public. As recently as March of 1999 when it was requesting a \$40 million increase in its budget, LSC claimed to have served 1,932,613 poor in 1997. Yet, every program or grantee that has been audited has demonstrated serious miscounting or over-counting of cases.

- Information from the LSC's Inspector General's office found that of 6 programs reviewed, nearly two-thirds of their reported cases were inaccurate.
- GAO reported in a June, 1999 audit that one third of reported cases were overstated in five of the largest grantees.
- This month, the IG released 3 more audits. Grantees in Philadelphia, Monroe County, New York and Maryland continued double-counting cases, omitting verification of citizenship or eligibility in case files and even reported phantom cases.

And, the 1998 figures are still not public—although they typically would be published in May, 1999. *These figures are now 4 months late to the Congress.* We know LSC didn't serve 1.9 million people in 1997. One would assume that the 1998 figures would be below 1.9 million as well, but Congress should have that information prior to additional appropriations being made to LSC from the taxpayer.

One might be able to chalk the errors up to bureaucratic bungling had we not seen LSC take quiet remedial steps to solve their case statistics problem in late 1998. At the same time, no mention of this over-counting problem was made to Congress until publicity intensified after a March 1999 House appropriations subcommittee hearing and an Associated Press story broke on April 8, 1999.

My lengthier Background that is attached (in the form of my written testimony) for the record documents the unchallenged facts and timetable as to when LSC knew they had a problem, and when they revealed it to the Congress. It would appear that there remains much to find out about the 1997 and 1998 case statistics and the use of taxpayer dollars; however, as stated earlier, every case audited has revealed significant over-counting and mis-reporting.

Performance-based Governing is a Bipartisan Effort

When Congress passed the Government Performance and Results Act in 1993, it codified the desire of the Congress to hold federal programs accountable for their actual performance (not the good intentions or the process measures that can easily distract decision-makers). The Results Act's implementation has triggered a quiet but fundamental change in the way Washington is making decisions. The Results Act has provided the Congress with the tools needed to comprehensively evaluate federal programs to determine what's working, what's wasted, what needs to be improved and what needs to be rethought. Pursuant to this law, existing federal programs are designing five year strategic plans, annual performance plans and annual performance reports.

The Results Act calls for objective, reliable data to define and measure program performance and it seeks to hold programs and managers accountable for performance. This may be a novel concept for the federal government; but states and local governments are increasingly using performance measures to ensure taxpayer money is wisely used.

As a colleague of mine said, *"While the Results Act does not generate immediate excitement, it will—if properly administered—deliver the most significant level of government accountability for tax dollars in American history. For the first time, taxpayers will know how federal agencies are spending their money, which of them are doing it effectively and which of them are wasting taxpayers' money."* Performance based government, a non-partisan initiative, is about restoring Americans' trust in government based on the results of government programs.

LSC has chosen to abide by the Results Act and be accountable for its performance using the same reporting mechanisms that other federal agencies have imposed upon them.

Congress Must Respond when Data is Misleading or Inaccurate

Two things can render the move towards performance based governance null and void. *First, the Results Act is useless unless Congress can rely on the information it is provided.* Without a doubt, there is an early indication that data reliability is not only a problem at LSC. The General Accounting Office recently issued a report that said that 20 of the largest 24 federal agencies expect to have problems verifying their performance data to the Congress next year when the Results Act requires a Performance Report in March of 2000.

And second, the Results Act will be completely ineffectual if Congress provides increased money to non-performing agencies. If Congress does nothing in the face of poor or misleading performance, cynicism is likely to increase and the opportunity to restore public trust will be missed.

So, whereas LSC's misleading performance data is only the *beginning* of many data problems likely to present themselves to Congress, many are watching

Congress's handling of LSC as an early case of whether all agencies need to take their own performance seriously or not.

Now that the facts are clear, the ball is in Congress's court. *What is to be done now that LSC has been caught misleading the Congress about what it is doing with taxpayer dollars?*

Summary

No one would deny that the less privileged in our society benefit significantly from legal assistance. But it is entirely unacceptable for Congress, the states or private entities to continue to provide funding to LSC programs without having credible and accurate information on how current funds are being spent.

Just as you or I would alter our donations to a charity if we learned the charity had misrepresented its activities in its annual report, so too should Congress be equally vigilant with taxpayer dollars in the face of gross overstatements by an entity entrusted to serve the poor.

Thank you for your time and attention. I look forward to any questions you may have for me.

TIME FOR CONGRESS TO HOLD THE LEGAL SERVICES CORPORATION ACCOUNTABLE

The views I express are entirely my own, and should not be construed as representing any official position of The Heritage Foundation.

The Legal Services Corporation (LSC) is a federally funded agency with 269 grantee offices around the country that have provided over \$6 billion of free legal aid to the eligible poor since 1974. For fiscal year (FY) 2000, the LSC is requesting a \$40 million increase, to bring its funding level to \$340 million. This represents about a 13 percent increase in agency funding at a time when the U.S. General Accounting Office (GAO), the LSC's own inspector general, and the press have uncovered serious problems with the agency's case reporting statistics and performance numbers. Audits of the LSC's 1997 caseload data for 11 grantee offices—which reported handling 370,000 cases—determined that only 198,000 were valid.¹

Until Congress receives accurate information about the performance of the Legal Services Corporation's grantees, it cannot hold the agency accountable for its performance and its use of taxpayer dollars. Congress should demand that all LSC programs supply timely and accurate data on program performance; it also should require independent audits and conduct investigative hearings. In addition, Members of Congress should ask whether it is even appropriate for the federal government to be funding this program. If it is not, they should consider closing down the LSC by transferring its funding to the Department of Justice, with a strict formula for block granting those funds to the states based on the number of poor in each jurisdiction. The responsibility for providing legal services to the poor belongs more appropriately to state and local officials and to private-sector institutions—those closest to the people in need of assistance.

THE TROUBLE WITH THE LSC'S NUMBERS

The LSC Factbook is a benchmark of LSC performance figures not only for Congress, but for states and private funding sources as well. In its 1998 Factbook,² the most recent issue available to Congress, the LSC reported that a total of 1,932,613 poor people were aided.³ (See the Appendix for the 1998 Factbook's 1997 case statistics for specific congressional districts.)

¹ U.S. General Accounting Office, Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees, GAO/GGD-99-135R, June 25, 1999, and associated material included in "Briefing to Congressional Requesters," June 21, 1999; Karen Gullo, "Legal Aid Programs Overstated Cases," Associated Press, April 8, 1999. See also Legal Services Corporation, Office of the Inspector General, Review of Case Statistics Report, AU99-012, March 1999; Review of Case Statistics Report, AU99-013, March 1999; General Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timekeeping System and Its Compliance with Selected Regulations, AU99-001, October 1998.

² Legal Services Corporation, 1998 Factbook & Program Information, at <http://www.lsc.gov/fbto98.html>. Each year, the Legal Services Corporation provides Congress with a Factbook which includes data on the number of clients served, the number of private attorneys participating in LSC-sponsored programs, the amount of federal and non-federal funding, and the number of full-time staff. Figures included in any given Factbook represent data for the previous calendar year. The 1998 Factbook, for example, reports figures for calendar year 1997. The 1999 Factbook is not yet published.

³ The Legal Services Corporation's 1998 Factbook, issued in May 1998, claimed that 269 grantees had 471,600 cases open and 1,461,873 cases closed at the end of 1997, serving a total of 1.9 million poor people with \$283 million in federal funds. Eligibility for assistance is found

Continued

After egregious errors in the 1998 Factbook numbers were reported in the press, however, the LSC was compelled to admit that it had not served as many clients as it had reported. An April 1999 LSC press release noted 400,000 fewer cases closed in 1997 than were reported in the 1998 Factbook.⁴ The agency also amended its 1998 projections, revising them downward. The LSC soon will deliver its 1998 data to Congress in the 1999 Factbook. Until additional audits are completed, no one can know with any certainty what the agency has accomplished with the taxpayer dollars that Congress has appropriated in the past.

The LSC's representation of its open and closed cases is important, because it is the only tangible information currently available to Congress on the agency's overall performance. Until this year, Congress has never seriously questioned the accuracy of LSC's numbers.

As Congress considers funding for the LSC within the Commerce, Justice, State, the Judiciary, and Related Agencies appropriation bill, it should seek credible, factual performance information that justifies the Administration's substantial budget request, especially in light of the LSC's previous misreporting of data.

The Search for Accurate Performance Information

Congress relies increasingly on performance measures, such as the number of clients served by the Legal Services Corporation, to decide whether funding for the agency's programs should be increased or decreased. Congress should specify better performance measures that would include credible data on the quality, and not simply the quantity, of the services the LSC provides to the poor. Indeed, Members of Congress—especially appropriators—look at the performance of programs to determine whether a program is working efficiently and achieving its goals. As Representative Harold Rogers (R-KY), chairman of the House Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, told the LSC in March 1999, "We want accurate information. . . . We do make our judgments based on the volume of the load that is represented to us."⁵

In December 1998, the Congressional Research Service (CRS) produced a study that examined the extent to which the past two Congresses had used the 1993 Government Performance and Results Act, a tool for measuring the success or failure of government programs and holding agencies accountable for their use of taxpayer funds. The study, requested by House Government Reform and Oversight Committee Chairman Dan Burton (R-IN), examined provisions in public laws enacted during the 104th and 105th Congresses. According to the CRS:

There are . . . indications that committees are interested in using performance-related information in the appropriations process and associated budget documentation. Over a third of all the committee reports identified in [our study] contained provisions linking performance measures and the budget process. Such provisions either stated the intent of the committee to consider the agency's progress in articulating outcome goals and measures during the appropriations process, suggested that the agency's budget submission include Results Act-related information and measures, or referred to realignment of program and budget structures in an agency's budget submission. . . . In addition, many reports included language that noted that future funding for an activity or program would be contingent upon establishing goals and measures or upon future performance against established goals.⁶

Even the LSC recognizes the linkage between performance and funding. Its president stated recently that

Case statistics play an essential role in the budget request and performance plan submitted by LSC to the United States Congress each year. Therefore, the reliability of case statistics submitted by programs to LSC is vital to obtaining

In Section 1007(a)(2) of the Legal Services Corporation Act, which requires the LSC to establish maximum income levels for individuals eligible for legal assistance. Section 1611.3(b) of LSC's regulations establishes a maximum income level equivalent to 125 percent of the federal poverty guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the poverty guidelines.

⁴Legal Services Corporation, Office of Public Affairs, press release, "Statement on Case Reporting System," April 8, 1999, available at <http://www.lsc.gov/prcsr.html>.

⁵Statement of Representative Harold Rogers, Chairman, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. House of Representatives, at FY 2000 appropriations hearing, March 3, 1999.

⁶Genevieve J. Knezo and Virginia McMurtry, "Executive Summary," Performance Measure Provisions in the 105th Congress: Analysis of a Selected Compilation, Congressional Research Service, December 1998, at <http://www.freedom.gov/results/crs/getresults-sum.asp>.

continued Federal funding for Legal Services. . . . We believe this type of information . . . holds great promise for securing increased federal funding for legal services.⁷

Congress appears to base its funding of the Legal Services Corporation on the agency's reported caseloads. The LSC then distributes the money to grantees based on a formula that takes local poverty statistics into account.

ACCOUNTABILITY VS. SPIN CONTROL

As a key funding source and manager of taxpayer dollars, Congress must have access to trustworthy LSC data about caseloads, clients, and agency operations. If the LSC cannot provide dependable information on even the quantity of cases handled by its offices, there is little hope that Congress can obtain more sophisticated and meaningful quality performance information on this government service.

The demand for accountability pressures government officials to define and then demonstrate their performance, particularly when programs are seriously deficient. As one former LSC employee recently lamented, for example:

For more than 20 years I worked at a small Legal Services Corporation-funded program and the work was immensely rewarding. But in 1996, when I was the program's litigation director, I quit due to the many practices and policies which, to my mind, had all but destroyed the program's ability to render competent legal assistance to people unable to afford counsel. One of these practices was the counting of virtually every telephone call as a "case" in order to build up numbers to report to LSC and other funding sources. Consequently, hundreds if not thousands, of reported cases were nothing more than referrals or other responses given by paralegals or secretaries.⁸

The LSC chose to use case statistics as a measure of its performance. On February 25, 1998, for example, LSC President John McKay testified:

For FY 1999, LSC seeks an appropriation of \$340 million. We estimate that this amount will enable local legal services programs funded by LSC to resolve over 1.6 million cases involving critical legal problems for eligible clients and their families. . . . Because of limited resources, local programs are forced to turn away tens of thousands of people with critical legal needs.⁹

Although Congress did not know about the caseload reporting problems, appropriators approved a \$17 million increase for the LSC on October 21, 1998, bringing its FY 1999 budget to \$300 million. Congress provided the funding with an expectation that the additional money would enable the LSC to serve 1.6 million clients in calendar year 1998. According to the LSC president, this new funding

represents the strong bipartisan backing that LSC has developed, and signals a renewed confidence that LSC is carrying out the will of Congress and is a vital part of the justice system. The increase will allow LSC-funded programs to serve a greater number of poor and disadvantaged clients more effectively in 1999.¹⁰

Uncovering the LSC's Reporting Problems

Concerns about the LSC's misrepresentation of its actual caseloads began to build after the agency's inspector general began in March 1999 to release the results of several audits. Since the IG has a dual reporting responsibility—both to the LSC Board and to Congress—the IG should have informed Congress of the seriousness of the errors found in the data. For example, of 149,589 cases reported for 1997 by six grantee offices, two-thirds were found to be invalid (see Table 1).

The inspector general's findings include the following examples, among others:

⁷Legal Services Corporation, "A Message from LSC President John McKay," February 2, 1999. This document originally was available at <http://www.lsc.gov/f11298jm/html>, but no longer is posted on the LSC Web site.

⁸John T. Hand, letter to the editor, *Investor's Business Daily*, June 18, 1999 (emphasis added).

⁹Statement of Douglas S. Eakeley, Chairman, John N. Erlenborn, Vice-Chairman, and John McKay, President, Legal Services Corporation, before Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. House of Representatives, February 25, 1998, p. 1.

¹⁰Legal Services Corporation, "A Message from LSC President, John McKay."

- The Legal Aid Society of San Diego claimed it closed 33,096 cases for 1997, but the IG audit revealed that only 10,787 of these cases were legitimate.¹¹
- Florida Rural Legal Services admitted in August 1998 that 39,471 of the cases it reported were invalid. This reduced the actual number of legitimately reportable cases to 13,922 out of 53,393 reported.¹²
- Legal Services of Miami claimed to have closed 23,800 cases in 1997; only 7,607 were found to be valid.¹³
- Of the 16,490 cases reported by the San Francisco Neighborhood Legal Assistance Foundation, only 4,134 were valid; the program's director submitted a revision when the increased scrutiny of caseload data began.¹⁴
- Legal Services of Northern Virginia reported 9,115 cases; only 5,156 were deemed valid.¹⁵
- The Houston office reported 13,695 cases, but in a preliminary report yet to be finalized and released by the IG, only 9,995 potentially were valid.¹⁶

WHY THE LSC'S PERFORMANCE NUMBERS WERE FLAWED

The reporting problems found in every program audited by the LSC's own inspector general and the U.S. General Accounting Office since the 1997 case statistics were reported raise concerns about systemic LSC performance deficiencies and reporting abilities. According to the IG¹⁷ and GAO¹⁸ audits, LSC performance numbers included:

Repeat reporting of old "open" cases; Phantom or non-existent cases; Telephone contacts reported as cases when eligibility was not determined and the applicant was not accepted into the program; Inclusion of non-LSC-funded cases in reports; and Double counting of cases.

Upon learning of the inspector general's preliminary audits, newspapers and editorial pages began to report on the LSC's problems. On April 8, 1999, for example, the Associated Press released a story documenting the problems that the IG had begun to acknowledge in March 1999. The news story indicated that some Members of Congress were concerned that the LSC might have misrepresented the number of cases it handled intentionally in order to secure additional funding.¹⁹ Following the AP story, several editorials in newspapers across the country criticized the LSC for its errors.

On March 3, 1999, during an annual appropriations oversight hearing, Representative Tom Latham (R-IA) began to ask questions about the LSC's veracity in reporting its caseload. The hearing was significant not only because it was the first time that LSC's numbers had been challenged by a Member of Congress, but also because it established clearly the committee's interest in linking the budget request to the agency's performance. In a follow-up written response to Latham's questions, the LSC's IG admitted that the agency's reported caseload figures are used for the annual budget request submitted to Congress.²⁰ This admission heightened concerns

¹¹ Legal Services Corporation, Office of the Inspector General, Review of Case Statistics Report, AU99-012.

¹² From information provided by the Florida office to the LSC.

¹³ Legal Services Corporation, Office of the Inspector General, Review of Case Statistics Report, AU99-013.

¹⁴ Robert P. Capistrano, Director of Litigation, San Francisco Neighborhood Legal Assistance Foundation, in a letter to the Legal Services Corporation concerning revised 1997 case service reports, December 30, 1998.

¹⁵ Legal Services Corporation, Office of the Inspector General, General Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timekeeping System and Its Compliance with Selected Regulations, AU99-001.

¹⁶ Legal Services Corporation, Office of the Inspector General, "Preliminary Draft Report of Gulf Coast Legal Foundation," August 7, 1998.

¹⁷ Legal Services Corporation, Office of the Inspector General, Review of Case Statistics Report, AU99-012; General Review of Case Statistics Report, AU99-013; General Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timekeeping System and Its Compliance with Selected Regulations, AU99-001. See also Gullo, "Legal Aid Programs Overstated Cases."

¹⁸ U.S. General Accounting Office, Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees.

¹⁹ Gullo, "Legal Aid Programs Overstated Cases."

²⁰ Answer No. 8 given by Legal Services Corporation management to a question posed by Representative Tom Latham (R-IA) following March 3, 1999, House Appropriations Subcommittee hearing on LSC's funding request for FY 2000; submitted to select chairmen in the House and Senate on March 31, 1999, by E. R. Quatrevaux, Inspector General, LSC.

in Congress and eventually precipitated a congressionally requested GAO audit of LSC grantees.

GAO Confirms Serious Data Problems

On May 3, 1999, five Members of Congress²¹ asked the U.S. General Accounting Office to continue to conduct random audits of LSC programs to collect additional facts before this year's allocation of tax dollars to the LSC. Congress asked the GAO to provide preliminary results of audits on five grantees by June.²² On June 25, 1999, the GAO reported that all five grantees audited had problems accurately reporting the number of cases handled. This reinforced the findings of the IG's own audits.

As Table 2 shows, the grantees overreported closed cases, and four of the five grantees overreported open cases. The operations of all five grantees included cases in which the eligibility of clients was not verifiable. In addition, the GAO reported that four of the five offices reported closed cases in which no activity had occurred during the past year, and five reported open cases where no activity had occurred during the past year.²³

Clearly, the LSC's reported caseload figures did not stand up to independent review and auditing.

THE LSC'S RESPONSES TO THE FINDINGS

Officials of the LSC, including the agency's president, were aware of the grantee reporting errors months before Congress was informed. In the summer of 1998, the LSC's president was informed of the audit findings of case reporting problems.²⁴ In September 1998, the inspector general informed some of his staff that "the numbers provided to Congress were inaccurate." The LSC, however, did not plan to release this information until March 2000, when its first Performance Report under the 1993 Government Performance and Results Act is due.²⁵

By late 1998, the LSC should have viewed the audit findings as serious enough to bring to the attention of Congress, especially since Congress at the time was debating whether to increase LSC funding for FY 1999 by \$17 million. The IG, knowing that the LSC did not plan to inform Congress of significant errors in its reported data, should have informed Congress of what the auditors were finding. Instead, the semiannual report issued by the inspector general on September 30, 1998, reported "no significant problems, abuses or discrepancies" in LSC programs.²⁶

At a recent public debate at The Heritage Foundation, LSC President John McKay admitted that his inspector general had advised him of the seriousness of the reporting problems in the summer of 1998:

Our Inspector General is here in the audience, and I would hesitate to speak for him, but it was very clear that, based on the strength of oral advice, from him to me, beginning actually in the summer of 1998, that we [the LSC] had a problem concerning the accuracy of the cases.²⁶

Why this serious problem was not reported to Congress is the heart of the issue. Indeed, in April 1999, the LSC revised downward its public estimates of the numbers of clients served in 1997 using taxpayer dollars,²⁷ even though it was asking all grantee offices to increase the types of cases they report for the next Factbook.²⁸

The LSC sent new guidance to all grantees to modify future methods for reporting cases.²⁹ One of the many changes required would have the effect of helping each program to report more cases. This subtle yet important change requires each LSC program to report cases on which it has worked regardless of funding sources. Since

²¹ Representatives Richard Arney (R-TX), Dan Burton (R-IN), Tom Latham (R-IA), Dan Miller (R-FL), and Charles Taylor (R-NC).

²² U.S. General Accounting Office, Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees.

²³ John McKay, remarks at Heritage Foundation forum, "Assessing LSC's Performance at Their 25th Anniversary," July 6, 1999.

²⁴ "LSC Inflated Workload While Demanding More Tax Funding," Human Events, May 7, 1999; e-mail to a few IG staff from LSC Inspector General Edouard Quatrevaux, September 23, 1998; responses to questions submitted after March 3 House Appropriations Subcommittee hearing by Representatives Tom Latham, Dan Miller, and Charles Taylor.

²⁵ Legal Services Corporation, Office of the Inspector General, Semi-Annual Report to Congress, September 30, 1998.

²⁶ McKay, remarks at Heritage Foundation forum, July 6, 1999.

²⁷ Legal Services Corporation, "Statement on Case Reporting System," April 8, 1999.

²⁸ Karen J. Sarjeant, Vice President for Programs, Legal Services Corporation, "Revised CSR Handbook," Program Letter 98-8, November 24, 1998.

²⁹ Ibid.

40 percent of the funding for most LSC grantees typically comes from non-federal sources—states, bar associations, or other private or public sources—this change not only will have the effect of inflating some of the future caseload numbers, but also will make it difficult to compare data relating to LSC's performance.

In May 1999, following congressional inquiries and the April AP story, the LSC sent out another letter advising all grantees that, among other things, a GAO audit was underway concerning the data they already had reported for 1997.³⁰ It asked program directors to affix their signatures attesting to the accuracy of their case statistics for 1998 because these figures would be compiled for the 1999 Factbook (which, because the LSC Factbooks typically are published in May of each year, is now overdue).

Unacceptable Excuses

Official denials of systemic reporting problems by the LSC have involved the following claims:³¹

LSC CLAIM #1: The scope of the problem is overstated; only five grantees overstated their cases, which is less than 3 percent of the LSC's caseload.

FACT: Each of the 11 LSC programs reviewed by an independent auditor—either the LSC's inspector general or the GAO—showed false case reporting problems. Specifically, the IG identified problems at Northern Virginia, Houston, San Diego, Miami, Florida Rural, and San Francisco.³² The LSC self-identified similar problems at Alameda, Central Michigan, Los Angeles, and Western Carolina. Of 25 randomly selected cases audited at Farm Workers Legal Services of North Carolina, nearly all lacked data critical to determining whether the clients helped were indeed eligible for federal aid.³³ The GAO reviewed five additional programs, each one of which involved similar errors.³⁴

LSC CLAIM #2: If anything, the LSC is underreporting its caseload.

FACT: Because each new review of the LSC's 1997 data reveals broad miscounting and overreporting, all numbers provided by the LSC are now viewed with skepticism. The LSC has taken steps to change the method for developing caseload estimates for Congress by asking offices to increase the types of cases handled, even if they are not funded by federal tax dollars. This will make annual comparisons of LSC caseload data, as well as performance measures for federally funded programs, nearly impossible.

LSC CLAIM #3: There is no evidence of fraud.

FACT: The LSC has not engaged in candid self-disclosure of problems with its 1997 case statistics. The gap in time between when the IG and the LSC leadership learned there was a problem and when Congress was advised of that problem is unacceptable. Moreover, the LSC's request for a \$40 million increase in its FY 2000 budget—based on the same overinflated estimates from the disputed 1997 case statistics, and after LSC's president had been informed of the problem—is itself nothing short of fraudulent.

LSC CLAIM #4: The Inspector General Act prevents the IG from informing Congress before his semiannual report is due.

FACT: Nothing prevents the LSC or its IG from advising Congress of discrepancies found in data used to award taxpayer funding. In fact, compliance with the 1994 Government Auditing Standards requires the IG to advise Congress and management whenever there is a need for timely reports.³⁵ These stand-

³⁰Karen J. Sarjeant, Vice President for Programs, Legal Services Corporation, letter to all LSC Program Directors concerning self-inspection procedures and case service reporting, May 14, 1999.

³¹John Erlenborn, Vice Chairman Board, Legal Services Corporation, letter to the editor, The Washington Times, May 1, 1999; Legal Services Corporation, "Statement on Case Reporting System," April 8, 1999.

³²Legal Services Corporation, Office of the Inspector General, Review of Case Statistics Report, AU99-012; General Review of Case Statistics Report, AU99-013; General Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timekeeping System and Its Compliance with Selected Regulations, AU99-001.

³³John McKay, President, Legal Services Corporation, in letter to J. Donald Cowan and Melissa Pershing, Legal Services of North Carolina, September 18, 1998.

³⁴U.S. General Accounting Office, Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees.

³⁵Standard 7.6 states: "Auditors should appropriately issue the reports to make the information available for timely uses by management, legislative officials and other interested parties." See U.S. General Accounting Office, "1994 Revision by the Comptroller General of the United States," Government Auditing Standards, GAO/OCG-94-9, June 1994. An interactive version of

ards encourage interim or oral reports to stimulate, not stymie, information flowing to policymakers.

LSC CLAIM #5: The LSC itself uncovered the problem through self-initiated audits, brought it to Congress's attention, and took steps to correct it.

FACT: The timeline shows that the LSC and its own inspector general knew of the emerging case reporting problems and did nothing to inform Congress. In late 1998, Congress voted an increase in federal funding for the LSC by relying on information the LSC knew to be false, and on its exaggerated claims of its performance. As late as March 1999, the LSC was still using these unreliable data in its requests for additional funds from Congress.

LSC CLAIM #6: Case numbers and performance information have no bearing on funding levels. Specific allocations are based on the eligible populations living in each service area, not on the number of cases handled or referred. Therefore, there is no incentive to inflate numbers.

FACT: The LSC, Congress, and even LSC grantees use performance or caseload numbers to influence funding from federal and non-federal sources. The agency's own five-year strategic plan for 1997-2002 established as an annual goal "[to] seek to provide high-quality legal services to the greatest number of eligible clients that our appropriation will support."³⁶ According to the LSC's president:

Case statistics play an essential role in the budget request and performance plan submitted by LSC to . . . Congress each year. Therefore, the reliability of case statistics submitted by programs to LSC is vital to obtaining continued Federal funding for Legal Services. . . . [T]his type of information . . . holds great promise for securing increased Federal funding. . . .³⁷

Moreover, inaccurate case numbers from the LSC can:

Attract additional non-federal funding (in 1997, over \$200 million in revenue came from non-federal funding); Skew evaluations for various competitive grants; Discourage competition from more cost-effective providers of legal services; and Mislead Congress and the public into believing that the LSC is performing better than is actually the case.

WHAT CONGRESS SHOULD DO

No one denies that the less privileged in society benefit significantly from free legal assistance. However, the LSC services only about 5 percent of the eligible poor. The lives of thousands of people have been improved by the efforts of pro bono attorneys and the ad hoc network of organizations and people, such as private foundations, churches, and synagogues, that have stepped up to assist the poor when they are in need. Unfortunately, however, the federal program to help the poor with legal assistance—the Legal Services Corporation—has shown itself to be deceptive in measuring its performance and impervious to efforts to institute accountability.

For this reason, the first question Congress should ask is whether the federal government should be running this program at all. If it is decided that providing legal services to the poor is not appropriately a federal function, Congress should consider devolving this responsibility to the states, local governments, and private-sector institutions and putting the LSC on a clear path toward eventual shutdown.³⁸

To accomplish this, Congress should transfer funding for legal services for the poor to the Department of Justice, with a strict formula for block-granting funds to the states based on the number of poor in each jurisdiction. Block grants not only would eliminate federal overhead, but also would permit states to institute their own accounting standards for grantees and allow them to conduct their own audits. Recent strides in welfare caseload reduction at the state level—driven in large part by the autonomy of the states to design appropriate welfare-to-work transitioning

the document, called The Yellow Book, is available at <http://www.ignet.gov/ignet/internal/manual/yellow/yellow.html#index>.

³⁶ Legal Services Corporation, Strategic Plan, 1997-2000, p. 9, at <http://www.lsc.gov/spv01.html>.

³⁷ Legal Services Corporation, "A Message from President John McKay," February 2, 1999.

³⁸ For more information on devolving and privatizing Legal Services Corporation functions, see Edwin Meese III, "Legal Services Corporation," in Scott A. Hodge, ed., *Balancing America's Budget: Ending the Era of Big Government* (Washington, D.C.: The Heritage Foundation, 1997), pp. 389-390; Kenneth F. Boehm and Peter T. Flaherty, "Why the Legal Services Corporation Must Be Abolished," Heritage Foundation Backgrounder No. 1057, October 18, 1995; Kenneth F. Boehm, "The Legal Services Corporation: New Funding, New Loopholes, Old Games," Heritage Foundation Backgrounder Update No. 276, May 17, 1996.

programs—have emboldened Washington to return to the states the responsibility for other federal programs once thought too large or cumbersome for states to handle. Washington should acknowledge that state and local leaders who know best how to serve the legitimate and critical legal needs of the poor are in a better position to design the most efficient system and provide quality services to those in need.

Alternatively, if it is decided that the Legal Services Corporation does represent a proper federal function, Congress should establish the criteria for evaluating the LSC's performance, including case statistics. In the short term, Congress should:

1. *Demand that the LSC issue its 1999 Factbook with 1998 caseload figures as soon as possible.* Congress and the public need to review how the LSC has spent taxpayer money—and what, if anything, it has accomplished—before deciding how much (if anything) should be appropriated for FY 2000. The 1999 Factbook may not be published until late July, giving little time for appropriators to study changes from the disputed numbers in the 1998 Factbook.

2. *Verify the accuracy of information Congress receives from the LSC in the future.* To ensure that federal tax dollars are not wasted and that those most in need are being helped, and to hold accountable those LSC officials who are responsible for providing inaccurate information to Congress, Congress should:

Require an annual independent audit of LSC case statistics, either by the GAO or by an outside contractor, to obtain a verifiable and accurate accounting of LSC performance. Audits should begin by verifying 1997 and 1998 data, since only 11 of the 269 grantee offices have been audited for their 1997 caseloads to date.

Prevent the LSC from administratively changing the definition of "reportable" cases to avoid accurate assessments of performance. The LSC's new administrative guidance to grantees in November 1998 will do just that. Congress should specify how it wishes the LSC to track federal funds and performance data.

Apply the Federal False Statements Act to the LSC and its grantees to prevent future misrepresentation of facts during the appropriations process. This act would allow penalties for misreporting data about caseloads or clients served with federal taxpayer dollars.

3. *Reduce FY 2000 funding.* Congress should reduce the LSC's annual appropriation, or make its funding contingent on the release of accurate data, to offset the overfunding provided in the past from LSC's provision of inaccurate data. Since federal funding is premised on delivery of services to a certain number of poor people and LSC's data have been questioned, federal funding should not be increased to the requested \$340 million. Congress must send a strong message that deception will not be tolerated or rewarded with larger budgets.

4. *Conduct new oversight hearings to determine what LSC officials knew and when they knew it.* The information that comes to light in these hearings could set the stage for future legislative changes to ensure that such misreporting does not happen again.³⁹ Such hearings would establish a benchmark for LSC performance and would demonstrate that Congress is serious about performance data and the accuracy of the information upon which it bases appropriations.

5. *Highlight the need for reform in each state.* As further scrutiny of the LSC and its 269 grantees' caseload data continues, Members of Congress can encourage local oversight efforts by state legislatures and local media. In Virginia, for example, heightened press attention to the reporting errors in one LSC program triggered new reporting and oversight by the state legislature.⁴⁰

CONCLUSION

In 1993, Congress passed and the President signed the Government Performance and Results Act with bipartisan support and the Clinton Administration's stamp of approval. The act codified Washington's desire to hold federal programs accountable for their performance and use of taxpayer dollars.

This law is useless, however, unless Congress can rely on the information provided by federal agencies. Until Congress receives accurate information about the performance of Legal Services Corporation grantees, it will continue to be unable to hold

³⁹ Possible forums would include the House Judiciary Committee or its Subcommittee on Commercial and Administrative Law; the Senate Health, Education, Labor and Pensions Committee; the House Government Reform Committee or Senate Governmental Affairs Committee; and the House Appropriations Subcommittees on Commerce, Justice, State, and Judiciary or Senate Appropriations Subcommittee on Commerce, Justice, State, and Judiciary.

⁴⁰ Jeremy Redmon, "Legal Clinic in Virginia Again Under Scrutiny: Service Suspected of Padding Clients," *The Washington Times*, April 20, 1999.

the LSC accountable. Congress should demand that all LSC programs supply timely and accurate data on program performance, and it should require independent audits and hold new investigative hearings to determine the reliability of information supplied by the LSC.

In the LSC's case especially, Members of Congress must be tenacious in seeking and obtaining the facts before spending more taxpayer dollars. The LSC's functions are carried out better and more appropriately by the states, localities, or private organizations. Until Congress can eliminate funding for this agency, however, enhanced congressional oversight is needed. With better information about the LSC's performance, Congress can assess the cost-effectiveness of the agency's delivery of services compared with other options to improve legal assistance to the poor.

APPENDICES*

1. Table: Claimed LSC cases vs. Actual LSC cases in 1997
2. Table: GAO Audits of LSC Caseloads in Five Offices Show Mis-reporting Problems
3. Table: Federal Funding History and Cases Reportedly Handled
4. Timeline: What Did LSC Officials Know and When Did They Know it?
5. Table: What Members of Congress Should Ask in Oversight Hearings
6. LSC Grantee Caseloads; State and Grantee Information for 1997
7. Select newspaper articles on Government Performance and Results Act

*Appendices 1 through 7 are not included. The citations of the articles contained in Appendix 7 are:

1. Stephen Barr, "Rallying Around the Performance and Results Act," *The Washington Post*, April 24, 1998, at A25.
2. Stephen Barr, "Agencies Struggle with Effectiveness Plans: Congressman Chides Science, Technology Bureaus for 'Huge Holes,'" *The Washington Post*, August 7, 1997, at A21.



Backgroundunder

Executive Summary

No. 1312

July 22, 1999

TIME FOR CONGRESS TO HOLD THE LEGAL SERVICES CORPORATION ACCOUNTABLE

VIRGINIA L. THOMAS AND RYAN H. ROGERS

The Legal Services Corporation (LSC), a federally funded agency that provides free legal aid to the poor through 269 grantee offices around the country, is asking Congress for a \$40 million increase in funding for fiscal year (FY) 2000. The request, which will be considered under the Commerce, Justice, State, the Judiciary, and Related Agencies appropriations bill, represents a 13 percent increase over FY 1999 funding—despite the fact that various government watchdogs and the media have reported serious problems with the LSC's case-reporting statistics and performance numbers.

Information on the LSC's handling of cases is important because it is the only tangible information on the agency's overall performance currently available to Congress. Congress relies on the accuracy and integrity of reporting on performance measures to determine the amount of funding agencies should receive, and agencies use their performance numbers to justify their budget requests to congressional appropriators. Until this year, Congress has not seriously questioned the accuracy of the LSC's reported numbers. But preliminary audits conducted by the LSC's own inspector general (IG) in 1998 have caused Members of Congress and the media to question the accuracy of LSC's 1997 caseload data.

Every program audited by the IG, and more

recently by the U.S. General Accounting Office (GAO), since the 1997 case statistics were released in the LSC's 1998 Factbook has demonstrated serious misreporting of the LSC caseload, and this has given rise to concerns about systemic performance deficiencies throughout the agency. In fact, the IG and GAO audits reveal that for 11 grantees that reported 370,000 cases, only 198,000 cases were deemed valid.

For the most part, audited LSC grantee offices overstated the number of cases handled, either because the cases were ineligible to be counted in the first place or because a case was counted more than once. In other instances, the statistics were inflated because telephone contacts and nonexistent cases were included in the numbers. *Investor's Business Daily* even quoted a former LSC employee who said that telephone calls made to the LSC offices were counted as cases simply to "build up numbers to

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Background

report to LSC and other funding sources." Despite the heightened scrutiny the agency received due to mounting evidence of misreporting, LSC officials still have not been forthcoming with accurate data for Congress.

As early as July 1998, the agency's inspector general told LSC President John McKay that case statistics at several offices were seriously flawed. In October 1998, when it approved a \$17 million increase in LSC funding—the first such increase in two years—Congress was still unaware of this information. In fact, the LSC's leadership did not report these performance problems to Congress for another five months, until March 1999. The agency should have viewed the IG's findings as serious enough to bring to the attention of Congress before this \$17 million decision was made.

As the evidence of management problems has emerged, many Members of Congress have become concerned that the LSC misled Congress intentionally. On May 3, 1999, five Members asked the GAO to audit additional LSC grantee offices to assess how widespread the reporting error problem is before Congress considers LSC funding for FY 2000. The GAO's recently released findings further discredit the LSC's 1997 case numbers and raise serious questions about all of the data supplied by this federal entity to Congress.

No one would deny that the less privileged in society benefit significantly from free legal assistance. But it is entirely unacceptable for Congress or the states to continue to disburse taxpayer funds to LSC programs without considering credible and accurate information on how current money is being spent. Indeed, just as donors would alter their charitable contributions if they learned a charity had misrepresented its activities in its annual report, so too should Congress be

vigilant with taxpayer dollars when LSC misrepresents the number of clients served.

In 1993, Congress passed the Government Performance and Results Act with bipartisan support and the Administration's stamp of approval. The act codified Washington's desire to hold federal programs accountable for their performance and their use of taxpayer dollars. It is useless, however, unless Congress can rely on the information provided by federal agencies. Without accurate information about the performance of Legal Services Corporation grantees, Congress cannot hold the agency accountable for its performance.

Congress should demand that the LSC immediately release its overdue 1999 Factbook so that Members can consider 1998 caseload data during the FY 2000 appropriations process. It also should reduce FY 2000 funding to offset the funding provided in previous years with overinflated statistics; conduct oversight hearings; and, to secure better information in the future, establish both quality and quantity measures that allow it to verify the accuracy of the LSC's information, including requiring annual independent audits, preventing the LSC from administratively changing the definition of reportable cases, and applying the Federal False Statements Act to the LSC and its grantees.

Once Congress has a clear picture of the agency's performance, Members should ask first whether the federal government should be running this program. If not, funding should be transferred to the U.S. Department of Justice to provide block grants to the states based on the number of eligible poor in each jurisdiction.

—Virginia L. Thomas is a Senior Fellow in Government Studies and Ryan H. Rogers is Research Assistant in Government Studies at The Heritage Foundation.



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The Legal Services Corporation (LSC) is a federally funded agency with 269 grantee offices around the country that have provided over \$6 billion of free legal aid to the eligible poor since 1974. For fiscal year (FY) 2000, the LSC is requesting a \$40 million increase, to bring its funding level to \$340 million. This represents about a 13 percent increase in agency funding at a time when the U.S. General Accounting Office (GAO), the LSC's own inspector general, and the press have uncovered serious problems with the agency's case reporting statistics and performance numbers. Audits of the LSC's 1997 caseload data for 11 grantee offices—which reported handling 370,000 cases—determined that only 198,000 were valid.¹

Until Congress receives accurate information about the performance of the Legal Services Corporation's grantees, it cannot hold the agency accountable for its performance and its use of taxpayer dollars. Congress should demand that all

LSC programs supply timely and accurate data on program performance; it also should require independent audits and conduct investigative hearings. In addition, Members of Congress should ask whether it is even appropriate for the federal government to be funding this program. If it is not, they should consider closing down the LSC by transferring its funding to the Department of Justice, with a strict formula for block granting those funds to the states based on the number of poor in each jurisdiction. The responsibility for providing legal services to the poor belongs more appropriately to state and

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1. U.S. General Accounting Office, *Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees*, GAO/GGD-99-135R, June 25, 1999, and associated material included in "Briefing to Congressional Requesters," June 21, 1999; Karen Gullo, "Legal Aid Programs Overstated Cases," Associated Press, April 8, 1999. See also Legal Services Corporation, Office of the Inspector General, *Review of Case Statistics Report*, AU99-012, March 1999; *Review of Case Statistics Report*, AU99-013, March 1999; *General Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timesheeting System and Its Compliance with Selected Regulations*, AU99-001, October 1998.

local officials and to private-sector institutions—those closest to the people in need of assistance.

THE TROUBLE WITH THE LSC'S NUMBERS

The LSC Factbook is a benchmark of LSC performance figures not only for Congress, but for states and private funding sources as well. In its 1998 Factbook,² the most recent issue available to Congress, the LSC reported that a total of 1,932,613 poor people were aided.³ (See the Appendix for the 1998 Factbook's 1997 case statistics for specific congressional districts.)

After egregious errors in the 1998 Factbook numbers were reported in the press, however, the LSC was compelled to admit that it had not served as many clients as it had reported. An April 1999 LSC press release noted 400,000 fewer cases closed in 1997 than were reported in the 1998 Factbook.⁴ The agency also amended its 1998 projections, revising them downward. The LSC soon will deliver its 1998 data to Congress in the 1999 Factbook. Until additional audits are completed, no one can know with any certainty what the agency has accomplished with the taxpayer dollars that Congress has appropriated in the past.

Claimed LSC Cases vs. Actual LSC Cases in 1997						
	Claimed			Actual		
	Open	Closed	Total	Open	Closed	Total
San Diego	792	32,304	33,096	508	10,279	10,787
Florida Rural	44,993	8,400	53,393	5,522	8,400	13,922
Miami	3,313	20,487	23,800	2,664	4,943	7,607
San Francisco	495	15,995	16,490	165	3,969	4,134
Northern Virginia	4,949	4,166	9,115	1,549	3,607	5,156
Houston	9,042	4,653	13,695	7,442*	2,553*	9,995*
Total	63,584	86,005	149,589	17,850	33,751	51,601

Note: * = Approximations.
Source: Office of Inspector General, Legal Services Corporation.

- Legal Services Corporation, 1998 Factbook & Program Information, at <http://www.lsc.gov/fboc98.html>. Each year, the Legal Services Corporation provides Congress with a Factbook which includes data on the number of clients served, the number of private attorneys participating in LSC-sponsored programs, the amount of federal and non-federal funding, and the number of full-time staff. Figures included in any given Factbook represent data for the previous calendar year. The 1998 Factbook, for example, reports figures for calendar year 1997. The 1999 Factbook is not yet published.
- The Legal Services Corporation's 1998 Factbook, issued in May 1998, claimed that 269 grantees had 471,600 cases open and 1,461,873 cases closed at the end of 1997, serving a total of 1.9 million poor people with \$283 million in federal funds. Eligibility for assistance is found in Section 1007(a)(2) of the Legal Services Corporation Act, which requires the LSC to establish maximum income levels for individuals eligible for legal assistance. Section 1611.3(b) of LSC's regulations establishes a maximum income level equivalent to 125 percent of the federal poverty guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the poverty guidelines.
- Legal Services Corporation, Office of Public Affairs, press release, "Statement on Case Reporting System," April 8, 1999, available at <http://www.lsc.gov/prcs.html>.

NOTE: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

The LSC's representation of its open and closed cases is important, because it is the only tangible information currently available to Congress on the agency's overall performance. Until this year, Congress has never seriously questioned the accuracy of LSC's numbers.

As Congress considers funding for the LSC within the Commerce, Justice, State, the Judiciary, and Related Agencies appropriation bill, it should seek credible, factual performance information that justifies the Administration's substantial budget request, especially in light of the LSC's previous misreporting of data.

The Search for Accurate Performance Information

Congress relies increasingly on performance measures, such as the number of clients served by the Legal Services Corporation, to decide whether funding for the agency's programs should be increased or decreased. Congress should specify better performance measures that would include credible data on the quality, and not simply the quantity, of the services the LSC provides to the poor. Indeed, Members of Congress—especially appropriators—look at the performance of programs to determine whether a program is working efficiently and achieving its goals. As Representative Harold Rogers (R-KY), chairman of the House Appropriations Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, told the LSC in March 1999, "We want accurate information.... We do make our judgments based on the volume of the load that is represented to us."⁵

In December 1998, the Congressional Research Service (CRS) produced a study that examined the extent to which the past two Congresses had used the 1993 Government Performance and Results

Act, a tool for measuring the success or failure of government programs and holding agencies accountable for their use of taxpayer funds. The study, requested by House Government Reform and Oversight Committee Chairman Dan Burton (R-IN), examined provisions in public laws enacted during the 104th and 105th Congresses. According to the CRS:

There are...indications that committees are interested in using performance-related information in the appropriations process and associated budget documentation. Over a third of all the committee reports identified in [our study] contained provisions linking performance measures and the budget process. Such provisions either stated the intent of the committee to consider the agency's progress in articulating outcome goals and measures during the appropriations process, suggested that the agency's budget submission include Results Act-related information and measures, or referred to realignment of program and budget structures in an agency's budget submission.... In addition, many reports included language that noted that future funding for an activity or program would be contingent upon establishing goals and measures or upon future performance against established goals.⁶

Even the LSC recognizes the linkage between performance and funding. Its president stated recently that

Case statistics play an essential role in the budget request and performance plan submitted by LSC to the United States Congress each year. Therefore, the

5. Statement of Representative Harold Rogers, Chairman, Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. House of Representatives, at FY 2000 appropriations hearing, March 3, 1999.
6. Genevieve J. Knezo and Virginia McMurtry, "Executive Summary," *Performance Measure Provisions in the 105th Congress: Analysis of a Selected Compilation*, Congressional Research Service, December 1998, at <http://www.freedom.gov/results/crs/getresults-sum.asp>.

reliability of case statistics submitted by programs to LSC is vital to obtaining continued Federal funding for Legal Services.... We believe this type of information...holds great promise for securing increased federal funding for legal services.⁷

Congress appears to base its funding of the Legal Services Corporation on the agency's reported caseloads. The LSC then distributes the money to grantees based on a formula that takes local poverty statistics into account.

ACCOUNTABILITY VS. SPIN CONTROL

As a key funding source and manager of taxpayer dollars, Congress must have access to trustworthy LSC data about caseloads, clients, and agency operations. If the LSC cannot provide dependable information on even the quantity of cases handled by its offices, there is little hope that Congress can obtain more sophisticated and meaningful quality performance information on this government service.

The demand for accountability pressures government officials to define and then demonstrate their performance, particularly when programs are seriously deficient. As one former LSC employee recently lamented, for example:

For more than 20 years I worked at a small Legal Services Corporation-funded program and the work was immensely rewarding. But in 1996, when I was the program's litigation director, I quit due to the many practices and policies which, to my mind, had all but destroyed the program's ability to render competent legal assistance to people unable to afford counsel. One of these practices was the

counting of virtually every telephone call as a "case" in order to build up numbers to report to LSC and other funding sources. Consequently, hundreds if not thousands, of reported cases were nothing more than referrals or other responses given by paralegals or secretaries.⁸

The LSC chose to use case statistics as a measure of its performance. On February 25, 1998, for example, LSC President John McKay testified:

For FY 1999, LSC seeks an appropriation of \$340 million. We estimate that this amount will enable local legal services programs funded by LSC to resolve over 1.6 million cases involving critical legal problems for eligible clients and their families.... Because of limited resources, local programs are forced to turn away tens of thousands of people with critical legal needs.⁹

Although Congress did not know about the caseload reporting problems, appropriators approved a \$17 million increase for the LSC on October 21, 1998, bringing its FY 1999 budget to \$300 million. Congress provided the funding with an expectation that the additional money would enable the LSC to serve 1.6 million clients in calendar year 1998. According to the LSC president, this new funding

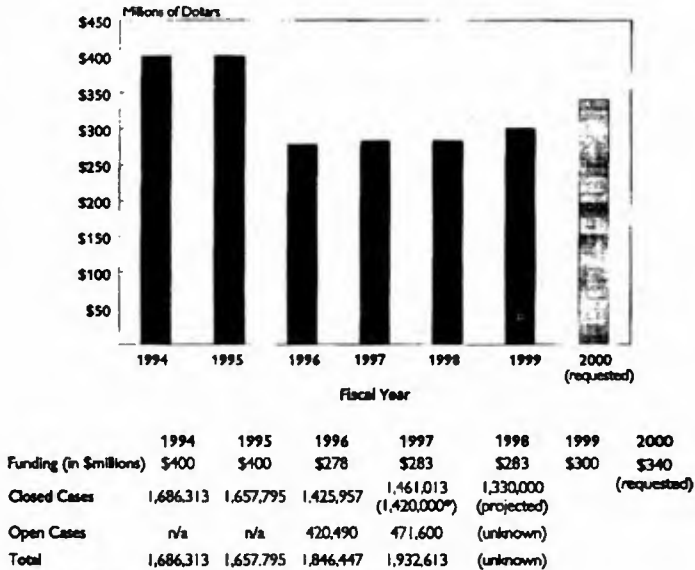
represents the strong bipartisan backing that LSC has developed, and signals a renewed confidence that LSC is carrying out the will of Congress and is a vital part of the justice system. The increase will allow LSC-funded programs to serve a greater number of poor and disadvantaged clients more effectively in 1999.¹⁰

7. Legal Services Corporation, "A Message from LSC President John McKay," February 2, 1999. This document originally was available at <http://www.lsc.gov/f1298jm/html>, but no longer is posted on the LSC Web site.

8. John T. Hand, letter to the editor, *Investor's Business Daily*, June 18, 1999 (emphasis added).

9. Statement of Douglas S. Eakley, Chairman, John N. Erlenborn, Vice-Chairman, and John McKay, President, Legal Services Corporation, before Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies, Committee on Appropriations, U.S. House of Representatives, February 25, 1998, p. 1.

LSC Federal Funding History and Cases Reportedly Handled



Note: *—Revised by LSC in April 1999. n/a = records were not kept.

Sources: Legal Services Corporation, Office of Information Management and Office of the Treasurer and Comptroller

Uncovering the LSC's Reporting Problems

Concerns about the LSC's misrepresentation of its actual caseloads began to build after the agency's inspector general began in March 1999 to release the results of several audits. Since the IG has a dual reporting responsibility—both to the LSC Board and to Congress—the IG should have informed Congress of the seriousness of the errors found in the data. For example, of 149,589 cases

reported for 1997 by six grantee offices, two-thirds were found to be invalid (see Table 1).

The inspector general's findings include the following examples, among others:

- The Legal Aid Society of San Diego claimed it closed 33,096 cases for 1997, but the IG audit revealed that only 10,787 of these cases were legitimate.¹¹

10. Legal Services Corporation, "A Message from LSC President, John McKay"

11. Legal Services Corporation, Office of the Inspector General, *Review of Case Statistics Report*, AU99-012.



- Florida Rural Legal Services admitted in August 1998 that 39,471 of the cases it reported were invalid. This reduced the actual number of legitimately reportable cases to 13,922 out of 53,393 reported.¹²
- Legal Services of Miami claimed to have closed 23,800 cases in 1997; only 7,607 were found to be valid.¹³
- Of the 16,490 cases reported by the San Francisco Neighborhood Legal Assistance Foundation, only 4,134 were valid; the program's director submitted a revision when the increased scrutiny of caseload data began.¹⁴
- Legal Services of Northern Virginia reported 9,115 cases; only 5,156 were deemed valid.¹⁵
- The Houston office reported 13,695 cases, but in a preliminary report yet to be finalized and released by the IG, only 9,995 potentially were valid.¹⁶
- Repeat reporting of old "open" cases;
- Phantom or non-existent cases;
- Telephone contacts reported as cases when eligibility was not determined and the applicant was not accepted into the program;
- Inclusion of non-LSC-funded cases in reports; and
- Double counting of cases.

Upon learning of the inspector general's preliminary audits, newspapers and editorial pages began to report on the LSC's problems. On April 8, 1999, for example, the Associated Press released a story documenting the problems that the IG had begun to acknowledge in March 1999. The news story indicated that some Members of Congress were concerned that the LSC might have misrepresented the number of cases it handled intentionally in order to secure additional funding.¹⁹ Following the AP story, several editorials in newspapers across the country criticized the LSC for its errors.

WHY THE LSC'S PERFORMANCE NUMBERS WERE FLAWED

The reporting problems found in every program audited by the LSC's own inspector general and the U.S. General Accounting Office since the 1997 case statistics were reported raise concerns about systemic LSC performance deficiencies and reporting abilities. According to the IG¹⁷ and GAO¹⁸ audits, LSC performance numbers included:

On March 3, 1999, during an annual appropriations oversight hearing, Representative Tom Latham (R-IA) began to ask questions about the LSC's veracity in reporting its caseload. The hearing was significant not only because it was the first time that LSC's numbers had been challenged by a Member of Congress, but also because it estab-

12. From information provided by the Florida office to the LSC.

13. Legal Services Corporation, Office of the Inspector General, *Review of Case Statistics Report*, AU99-013.

14. Robert P. Capistrano, Director of Litigation, San Francisco Neighborhood Legal Assistance Foundation, in a letter to the Legal Services Corporation concerning revised 1997 case service reports, December 30, 1998.

15. Legal Services Corporation, Office of the Inspector General, *General Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timekeeping System and Its Compliance with Selected Regulations*, AU99-001.

16. Legal Services Corporation, Office of the Inspector General, "Preliminary Draft Report of Gulf Coast Legal Foundation," August 7, 1998.

17. Legal Services Corporation, Office of the Inspector General, *Review of Case Statistics Report*, AU99-012; *General Review of Case Statistics Report*, AU99-013; *General Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timekeeping System and Its Compliance with Selected Regulations*, AU99-001. See also Gullo, "Legal Aid Programs Overstated Cases."

18. U.S. General Accounting Office, *Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees*.

19. Gullo, "Legal Aid Programs Overstated Cases."

GAO Audits of LSC Caseloads in Five Offices Show Misreporting Problems

	Reported Open Cases	Reported Closed Cases	Reported Total Cases	Cases Found Valid by the GAO
Baltimore	25,772	27,490	53,262	18,697 (+/-1,634)
Chicago	8,322	29,032	37,354	30,037 (+/-1,829)
Los Angeles	2,870	25,091	27,961	20,017 (+/-1,740)
New York City	16,543	25,379	41,922	20,820 (+/-3,044)
Puerto Rico	14,540	45,977	60,517	56,958 (+/-2,226)

Source: U.S. General Accounting Office, *Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees*, GAO/GGD-99-135R, June 25, 1999.

lished clearly the committee's interest in linking the budget request to the agency's performance. In a follow-up written response to Latham's questions, the LSC's IG admitted that the agency's reported caseload figures are used for the annual budget request submitted to Congress.²⁰ This admission heightened concerns in Congress and eventually precipitated a congressionally requested GAO audit of LSC grantees.

GAO Confirms Serious Data Problems

On May 3, 1999, five Members of Congress²¹ asked the U.S. General Accounting Office to continue to conduct random audits of LSC programs to collect additional facts before this year's allocation of tax dollars to the LSC. Congress asked the GAO to provide preliminary results of audits on five grantees by June 21. On June 25, 1999, the GAO reported that all five grantees audited had problems accurately reporting the number of cases

handled. This reinforced the findings of the IG's own audits.

As Table 2 shows, the grantees overreported closed cases, and four of the five grantees overreported open cases. The operations of all five grantees included cases in which the eligibility of clients was not verifiable. In addition, the GAO reported that four of the five offices reported closed cases in which no activity had occurred during the past year, and five reported open cases where no activity had occurred during the past year.²²

Clearly, the LSC's reported caseload figures did not stand up to independent review and auditing.

THE LSC'S RESPONSES TO THE FINDINGS

Officials of the LSC, including the agency's president, were aware of the grantee reporting errors

20. Answer No. 8 given by Legal Services Corporation management to a question posed by Representative Tom Latham (R-IA) following March 3, 1999, House Appropriations Subcommittee hearing on LSC's funding request for FY 2000; submitted to select chairmen in the House and Senate on March 31, 1999, by E. R. Quatrevaux, Inspector General, LSC.

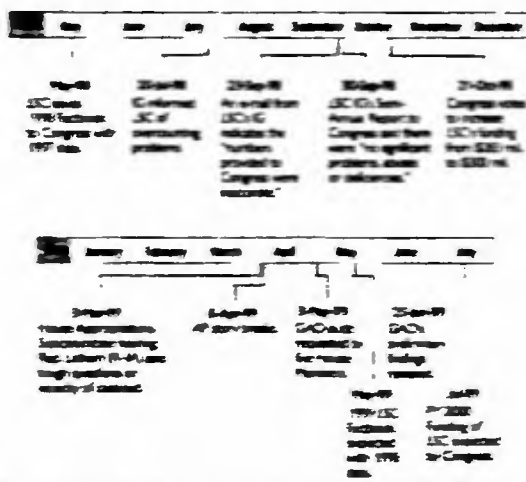
21. Representatives Richard Armey (R-TX), Dan Burton (R-IN), Tom Latham (R-IA), Dan Miller (R-FL), and Charles Taylor (R-NC).

22. U.S. General Accounting Office, *Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees*.

months before Congress was informed. In the summer of 1998, the LSC's president was informed of the audit findings of case reporting problems.²³ In September 1998, the inspector general informed some of his staff that "the numbers provided to Congress were inaccurate." The LSC, however, did not plan to release this information until March 2000, when its first Performance Report under the 1993 Government Performance and Results Act is due.²⁴

By late 1998, the LSC should have viewed the audit findings as serious enough to bring to the attention of Congress, especially since Congress at the time was debating whether to increase LSC funding for FY 1999 by \$17 million. The IG, knowing that the LSC did not plan to inform Congress of significant errors in its reported data, should have informed Congress of what the auditors were finding. Instead, the semi-annual report issued by the inspector general on September 30, 1998, reported "no significant problems, abuses or discrepancies" in LSC programs.²⁵

Timeline: What Did LSC Officials Know And When Did They Know It?



At a recent public debate at The Heritage Foundation, LSC President John McKay admitted that his inspector general had advised him of the seriousness of the reporting problems in the summer of 1998:

Our Inspector General is here in the audience, and I would hesitate to speak for him, but it was very clear that, based on the strength of our advice, from him to me, beginning actually in the summer of

23. John McKay speaks at Heritage Foundation forum, "Assessing LSC's Performance at Their 25th Anniversary," July 6, 1999.

24. "LSC Inflated Workload While Demanding More 'See Funding,'" Human Events, May 7, 1999; e-mail to a few IG staff from LSC Inspector General Edward Quaresima, September 23, 1998, responses to questions submitted after March 3 House Appropriations Subcommittee hearing by Representatives Tom Latham, Dan Miller, and Charles Taylor.

25. Legal Services Corporation, Office of the Inspector General, Semi-Annual Report to Congress, September 30, 1998.

1998, that we [the LSC] had a problem concerning the accuracy of the cases.²⁶

Why this serious problem was not reported to Congress is the heart of the issue. Indeed, in April 1999, the LSC revised downward its public estimates of the numbers of clients served in 1997 using taxpayer dollars,²⁷ even though it was asking all grantee offices to increase the types of cases they report for the next Factbook.²⁸

The LSC sent new guidance to all grantees to modify future methods for reporting cases.²⁹ One of the many changes required would have the effect of helping each program to report more cases. This subtle yet important change requires each LSC program to report cases on which it has worked regardless of funding sources. Since 40 percent of the funding for most LSC grantees typically comes from non-federal sources—states, bar associations, or other private or public sources—this change not only will have the effect of inflating some of the future caseload numbers, but also will make it difficult to compare data relating to LSCs performance.

In May 1999, following congressional inquiries and the April AP story, the LSC sent out another letter advising all grantees that, among other things, a GAO audit was underway concerning the data they already had reported for 1997.³⁰ It asked program directors to affix their signatures attesting

to the accuracy of their case statistics for 1998 because these figures would be compiled for the 1999 Factbook (which, because the LSC Factbooks typically are published in May of each year, is now overdue).

Unacceptable Excuses

Official denials of systemic reporting problems by the LSC have involved the following claims:³¹

LSC CLAIM #1: The scope of the problem is overstated; only five grantees overstated their cases, which is less than 3 percent of the LSC's caseload.

FACT: Each of the 11 LSC programs reviewed by an independent auditor—either the LSC's inspector general or the GAO—showed false case reporting problems. Specifically, the IG identified problems at Northern Virginia, Houston, San Diego, Miami, Florida Rural, and San Francisco.³² The LSC self-identified similar problems at Alameda, Central Michigan, Los Angeles, and Western Carolina. Of 25 randomly selected cases audited at Farm Workers Legal Services of North Carolina, nearly all lacked data critical to determining whether the clients helped were indeed eligible for federal aid.³³ The GAO reviewed five additional programs, each one of which involved similar errors.³⁴

26. McKay, remarks at Heritage Foundation forum, July 6, 1999.

27. Legal Services Corporation, "Statement on Case Reporting System," April 8, 1999.

28. Karen J. Serjeant, Vice President for Programs, Legal Services Corporation, "Revised CSR Handbook," Program Letter 98-8, November 24, 1998.

29. *Ibid.*

30. Karen J. Serjeant, Vice President for Programs, Legal Services Corporation, letter to all LSC Program Directors concerning self-inspection procedures and case service reporting, May 14, 1999.

31. John Erlenborn, Vice Chairman Board, Legal Services Corporation, letter to the editor, *The Washington Times*, May 1, 1999; Legal Services Corporation, "Statement on Case Reporting System," April 8, 1999.

32. Legal Services Corporation, Office of the Inspector General, *Review of Case Statistics Report, AU99-012; General Review of Case Statistics Report, AU99-013; General Review of Selected Parts of the Legal Services of Northern Virginia's 1997 Grant Activity Report and Timekeeping System and Its Compliance with Selected Regulations, AU99-001*.

33. John McKay, President, Legal Services Corporation, in letter to J. Donald Cowan and Melissa Penning, Legal Services of North Carolina, September 18, 1998.

34. U.S. General Accounting Office, *Legal Services Corporation: Substantial Problems in 1997 Case Reporting by Five Grantees*.



LSC CLAIM #2: If anything, the LSC is underreporting its caseload.

FACT: Because each new review of the LSC's 1997 data reveals broad miscounting and over-reporting, all numbers provided by the LSC are now viewed with skepticism. The LSC has taken steps to change the method for developing caseload estimates for Congress by asking offices to increase the types of cases handled, even if they are not funded by federal tax dollars. This will make annual comparisons of LSC caseload data, as well as performance measures for federally funded programs, nearly impossible.

LSC CLAIM #3: There is no evidence of fraud.

FACT: The LSC has not engaged in candid self-disclosure of problems with its 1997 case statistics. The gap in time between when the IG and the LSC leadership learned there was a problem and when Congress was advised of that problem is unacceptable. Moreover, the LSC's request for a \$40 million increase in its FY 2000 budget—based on the same overinflated estimates from the disputed 1997 case statistics, and after LSC's president had been informed of the problem—is itself nothing short of fraudulent.

LSC CLAIM #4: The Inspector General Act prevents the IG from informing Congress before his semiannual report is due.

FACT: Nothing prevents the LSC or its IG from advising Congress of discrepancies found in data used to award taxpayer funding. In fact, compliance with the 1994 Government Auditing Standards requires the IG to advise Congress and management whenever there is a need for timely reports.³⁵ These standards encourage interim or oral reports to stimulate, not stymie,

information flowing to policymakers.

LSC CLAIM #5: The LSC itself uncovered the problem through self-initiated audits, brought it to Congress's attention, and took steps to correct it.

FACT: The timeline shows that the LSC and its own inspector general knew of the emerging case reporting problems and did nothing to inform Congress. In late 1998, Congress voted an increase in federal funding for the LSC by relying on information the LSC knew to be false, and on its exaggerated claims of its performance. As late as March 1999, the LSC was still using these unreliable data in its requests for additional funds from Congress.

LSC CLAIM #6: Case numbers and performance information have no bearing on funding levels. Specific allocations are based on the eligible populations living in each service area, not on the number of cases handled or referred. Therefore, there is no incentive to inflate numbers.

FACT: The LSC, Congress, and even LSC grantees use performance or caseload numbers to influence funding from federal and non-federal sources. The agency's own five-year strategic plan for 1997–2002 established as an annual goal "[t]o seek to provide high-quality legal services to the greatest number of eligible clients that our appropriation will support."³⁶ According to the LSC's president:

Case statistics play an essential role in the budget request and performance plan submitted by LSC to...Congress each year. Therefore, the reliability of case statistics submitted by programs to LSC is vital to obtaining continued Federal

35. Standard 7.6 states: "Auditors should appropriately issue the reports to make the information available for timely uses by management, legislative officials and other interested parties." See U.S. General Accounting Office, "1994 Revision by the Comptroller General of the United States," *Government Auditing Standards*, GAO/OCG-94-9, June 1994. An interactive version of the document, called *The Yellow Book*, is available at <http://www.igsc.gov/igsc/interact/manual/yellow/yellow.html#index>.

36. Legal Services Corporation, *Strategic Plan, 1997–2000*, p. 9, at <http://www.lsc.gov/sp01.html>

funding for Legal Services.... [T]his type of information... holds great promise for securing increased Federal funding....³⁷

Moreover, inaccurate case numbers from the LSC can:

- Attract additional non-federal funding (in 1997, over \$200 million in revenue came from non-federal funding);
- Skew evaluations for various competitive grants;
- Discourage competition from more cost-effective providers of legal services; and
- Mislead Congress and the public into believing that the LSC is performing better than is actually the case.

WHAT CONGRESS SHOULD DO

No one denies that the less privileged in society benefit significantly from free legal assistance. However, the LSC services only about 5 percent of the eligible poor. The lives of thousands of people have been improved by the efforts of pro bono attorneys and the ad hoc network of organizations and people, such as private foundations, churches, and synagogues, that have stepped up to assist the poor when they are in need. Unfortunately, however, the federal program to help the poor with legal assistance—the Legal Services Corporation—has shown itself to be deceptive in measuring its performance and impervious to efforts to institute accountability.

For this reason, the first question Congress should ask is whether the federal government should be running this program at all. If it is decided that providing legal services to the poor is

not appropriately a federal function, Congress should consider devolving this responsibility to the states, local governments, and private-sector institutions and putting the LSC on a clear path toward eventual shutdown.³⁸

To accomplish this, Congress should transfer funding for legal services for the poor to the Department of Justice, with a strict formula for block-granting funds to the states based on the number of poor in each jurisdiction. Block grants not only would eliminate federal overhead, but also would permit states to institute their own accounting standards for grantees and allow them to conduct their own audits. Recent strides in welfare caseload reduction at the state level—driven in large part by the autonomy of the states to design appropriate welfare-to-work transitioning programs—have emboldened Washington to return to the states the responsibility for other federal programs once thought too large or cumbersome for states to handle. Washington should acknowledge that state and local leaders who know best how to serve the legitimate and critical legal needs of the poor are in a better position to design the most efficient system and provide quality services to those in need.

Alternatively, if it is decided that the Legal Services Corporation does represent a proper federal function, Congress should establish the criteria for evaluating the LSC's performance, including case statistics. In the short term, Congress should:

1. Demand that the LSC issue its 1999 Factbook with 1998 caseload figures as soon as possible. Congress and the public need to review how the LSC has spent taxpayer money—and what, if anything, it has accomplished—before deciding how much (if anything) should be appropriated for FY 2000.

37. Legal Services Corporation, "A Message from President John McKay," February 2, 1999.

38. For more information on devolving and privatizing Legal Services Corporation functions, see Edwin Meese III, "Legal Services Corporation," in Scott A. Hodge, ed., *Balancing America's Budget: Ending the Era of Big Government* (Washington, D.C.: The Heritage Foundation, 1997), pp. 389–390; Kenneth F. Boehm and Peter T. Flaherty, "Why the Legal Services Corporation Must Be Abolished," *Heritage Foundation Backgrounders* No. 1057, October 18, 1995; Kenneth F. Boehm, "The Legal Services Corporation: New Funding, New Loopholes, Old Games," *Heritage Foundation Backgrounders Update* No. 276, May 17, 1996.

The 1999 Factbook may not be published until late July, giving little time for appropriators to study changes from the disputed numbers in the 1998 Factbook.

2. **Verify the accuracy of information Congress receives from the LSC in the future.** To ensure that federal tax dollars are not wasted and that those most in need are being helped, and to hold accountable those LSC officials who are responsible for providing inaccurate information to Congress, Congress should:

- **Require an annual independent audit of LSC case statistics,** either by the GAO or by an outside contractor, to obtain a verifiable and accurate accounting of LSC performance. Audits should begin by verifying 1997 and 1998 data, since only 11 of the 269 grantee offices have been audited for their 1997 caseloads to date.
- **Prevent the LSC from administratively changing the definition of "reportable" cases** to avoid accurate assessments of performance. The LSC's new administrative guidance to grantees in November 1998 will do just that. Congress should specify how it wishes the LSC to track federal funds and performance data.
- **Apply the Federal False Statements Act** to the LSC and its grantees to prevent future misrepresentation of facts during the appropriations process. This act would allow penalties for misreporting data about caseloads or clients served with federal taxpayer dollars.

3. **Reduce FY 2000 funding.** Congress should reduce the LSC's annual appropriation, or make its funding contingent on the release of accurate data, to offset the overfunding provided in the past from LSC's provision of inaccurate data. Since federal funding is premised

What Members of Congress Should Ask in Oversight Hearings

- What did the Legal Service Corporation, its board, and its inspector general know, and when did they know it?
- Why wasn't Congress informed as remedial steps were taken?
- Whose decision was it not to report data and performance problems to Congress immediately to consider action until March 2000 to inform Congress?
- For any given LSC grantee reported caseload, how much is attributable to cases opened in 1996, 1995, 1994, 1993, 1992, or earlier?
- What is the status of the Houston audit, the findings of which were given to the inspector general last August but still have not been released?
- Who received the 1998 Factbook from the LSC and needs to be informed of its inaccuracies?

on delivery of services to a certain number of poor people and LSC's data have been questioned, federal funding should not be increased to the requested \$340 million. Congress must send a strong message that deception will not be tolerated or rewarded with larger budgets.

4. **Conduct new oversight hearings to determine what LSC officials knew and when they knew it.** The information that comes to light in these hearings could set the stage for future legislative changes to ensure that such misreporting does not happen again.³⁹ Such hearings would establish a benchmark for LSC performance and would demonstrate that

39. Possible forums would include the House Judiciary Committee or its Subcommittee on Commercial and Administrative Law; the Senate Health, Education, Labor and Pensions Committee; the House Government Reform Committee or Senate Governmental Affairs Committee; and the House Appropriations Subcommittee on Commerce, Justice, State, and Judiciary or Senate Appropriations Subcommittee on Commerce, Justice, State, and Judiciary.



Congress is serious about performance data and the accuracy of the information upon which it bases appropriations.

5. **Highlight the need for reform in each state.** As further scrutiny of the LSC and its 269 grantees' caseload data continues, Members of Congress can encourage local oversight efforts by state legislatures and local media. In Virginia, for example, heightened press attention to the reporting errors in one LSC program triggered new reporting and oversight by the state legislature.⁴⁰

CONCLUSION

In 1993, Congress passed and the President signed the Government Performance and Results Act with bipartisan support and the Clinton Administration's stamp of approval. The act codified Washington's desire to hold federal programs accountable for their performance and use of taxpayer dollars.

This law is useless, however, unless Congress can rely on the information provided by federal agencies. Until Congress receives accurate infor-

mation about the performance of Legal Services Corporation grantees, it will continue to be unable to hold the LSC accountable. Congress should demand that all LSC programs supply timely and accurate data on program performance, and it should require independent audits and hold new investigative hearings to determine the reliability of information supplied by the LSC.

In the LSC's case especially, Members of Congress must be tenacious in seeking and obtaining the facts before spending more taxpayer dollars. The LSC's functions are carried out better and more appropriately by the states, localities, or private organizations. Until Congress can eliminate funding for this agency, however, enhanced congressional oversight is needed. With better information about the LSC's performance, Congress can assess the cost-effectiveness of the agency's delivery of services compared with other options to improve legal assistance to the poor.

—Virginia L. Thomas is a Senior Fellow in Government Studies and Ryan H. Rogers is Research Assistant in Government Studies at The Heritage Foundation.

⁴⁰ Jeremy Redmon, "Legal Clinic in Virginia Again Under Scrutiny: Service Suspected of Padding Clients," *The Washington Times*, April 20, 1999.

Legal Services Corporation Grantee Caseloads

A Column Has Been Included for 1998 Numbers When They Become Available

		1997 Cases	1998 Cases	Member of Congress Served
Alabama	LS of Metro Birmingham, Inc.	4,296		Backus, Hilliard
	LS of North Central AL, Inc.	2,629		Adams, Cranner
	LS Corp of Alabama, Inc.	22,331		Callahan, Everett, Ray, Adams, Cranner, Hilliard
Alaska	Alaska LS Corp.	5,136		Young
Arizona	Pinel & Gila Counties LAS	2,873		Pastor, Kolbe, Hayworth
	Community LS Inc.	12,576		Serman, Pastor, Saurin, Shattuck
	Phoenix LS Inc.	1,364		Pastor
	Southern AZ Legal Aid Inc.	13,125		Pastor, Saurin, Kolbe, Hayworth
	DNA People's LS Inc.	8,844		all AZ Members
Arkansas	Ozark Legal Services	2,473		Barry, Snyder, Hutchinson
	Western Arkansas Legal Services	2,809		Snyder, Hutchinson
	Center for Arkansas LS	9,982		Barry, Snyder, Chisley
	Lg Soc of NE Arkansas Inc.	3,299		Barry
	East Arkansas Legal Services	2,817		Barry
California	Greater Berkeley Lg Soc Inc.	4,628		Dooley, Thomas
	Redwood Legal Assistance	3,660		Thompson
	Central California Legal Services	8,719		Doroshenko, Condit, Redenbach, Dooley, Thomas
	Legal Aid Fdn of Long Beach	1,138		Moss
	Legal Aid Fdn of Los Angeles	27,564		Wassman, Berman, Martinez, Chavez, Ruybal-Adams, Houshagian, Williams, Kaplanovich, Reyes, Miller, Gary
	California Indian Lg Soc Assoc.	2,771		all CA Members
	LAS of Alameda County	26,350		Lee, Taubman, Stark
	Orland Counties Lg Soc Assoc.	1,749		Casper, Callaghy, Sherman
	San Francisco Bay North Lg Soc	11,999		Sherman, McKee, Berman, Rogers
	SP Pasadena & San Gabriel-Pomona	8,215		Rogers, Berman, Martinez, Miller, Gary
	LAS of San Mateo County	3,057		Larson, Fisher
	Contra Costa Lg Soc Foundation	3,286		Miller, George, Taubman
	Inner Counties Lg Soc Inc.	7,734		Lewis, Miller, Gary, Brown, Calvert, Bond
	Lg Soc of Northern CA Inc.	26,947		Harper, Oles, Cordoba, Mease, Pando
	LAS of San Diego Inc.	33,096		Parkins, Stray, Piner, Cunningham, Hunter
	California Rural Lg Aid Inc.	24,492		Oles, Winokur, Pando, Berman, Campbell, Lefgren, Felt, Corbett, Redenbach, Dooley, Casper
	San Francisco North Lg Soc Fdn	16,495		Parker, Lambie
	Community Legal Services	2,668		Schroeder, Campbell, Lefgren
	Legal Aid of Marin	2,343		Thompson, Anthony
	LAS of Orange County Inc.	26,994		Ruybal-Adams, Winokur, McDermott, Henry, Reyes, Miller, Gary, Sanchez, Cook, Parkins
	Legal Aid of the Central Coast	2,614		Campbell, Piner
Colorado	FrontRange Pk. River Legal Aid	7,405		Waters, Hefley
	CO Rural Legal Services	6,978		Waters, Schaffer
	LAS of Metro Denver	15,234		all CO Members
Connecticut	Stapleton LS of CT	18,452		all CT Members
Delaware	LS of Delaware, Inc.	377		Casler
District of Columbia	Legal LS Program of DC	1,330		Waters, Hefley

Sources: Legal Services Corporation, Office of Inspector General and Office of Information Management.

Legal Services Corporation Grantee Caseloads

A Column Has Been Included for 1998 Numbers When They Become Available

		1997 Cases	1998 Cases	Member of Congress Served
Florida	Central Florida Lgl Svcs Inc	4,355		Foster; Thurman; Stearns; Mica
	LA Service of Broward County Inc	6,591		McCormack; Wexler; Deutsch; Shaw
	Three Rivers Legal Services Inc	2,761		Boyd; Brown; Thurman; Stearns
	Jacksonville Area Legal Aid Inc	4,027		Boyd; Brown; Foster
	Florida Rural Lgl Svcs Inc	53,393		Canady; Goss; Foley; Hastings
	Lgl Svcs of Greater Miami Inc	23,800		Mast; Ros-Lehtinen; Deutsch; Otis-Bart
	Whitescrosses Area Lgl Svcs Inc	2,888		Brown; Thurman; Stearns
	Greater Orlando Area Lgl Svcs	4,631		Brown; Stearns; McCormack; Weldon
	Northwest Florida Lgl Svcs Inc	3,640		Scarborough
	Gulfcoast Legal Services Inc	8,117		Young; Miller
	Lgl Svcs of North Florida Inc	8,302		Scarborough; Boyd
	Bay Area Legal Services Inc	10,558		Binkley; Davis; Canady; Miller; D.
Georgia	Atlanta Legal Aid Society	13,978		Coffey; McGowan; Lewis; Johnson
	Georgia Legal Services Program	22,191		all GA Members
Guam	Guam Legal Services Corp	718		Underwood
Hawaii	Native Hawaiian Legal Corp	440		Allen; Lundberg; Mark
	Legal Aid Society of Hawaii	12,496		Allen; Lundberg; Mark
Idaho	Idaho Legal Aid Services Inc	7,320		Chenoweth; Simpson
Illinois	Land of Lincoln Lgl Assist Fdn Inc	13,323		Chenoweth; Boring; Evans; LaHood; Phillips; Stenhouse
	Lgl Assist Foundation of Chicago	37,354		Ruth; Jackson; Levine; Gutierrez; Ragsdale; Hylle; Davis; Schlosberg; Walker
	West Central Illinois Lgl Assist	1,325		Evans; LaHood
	Cook County Lgl Assist Fdn Inc	8,071		Ruth; Jackson; Levine; Gutierrez; Ragsdale; Hylle; Crane; Schlosberg; Porter; Walker; Eggers
	Priorities State Lgl Services Inc	17,777		Hylle; Crane; Porter; Walker; Eggers; Hylle; Boring; Phillips; Evans; LaHood
Indiana	Lgl Svcs of Maumee Valley Inc	2,434		Stauder
	Lgl Svcs of NW Indiana Inc	4,782		Vickrey; Buyer
	Lgl Svcs Org of Indiana Inc	14,705		Mohrman; Stauder; Buyer; Burton; Pless
Iowa				Hessinger
	Lgl Svcs Prog of N Indiana Inc	5,461		Reamer; Stauder; Buyer; Burton; Pless
Iowa	Lgl Services Corp of Iowa	28,929		all IA Members
	LAS Polk County	7,332		Ganley
Kansas	Kansas Legal Services Inc	33,785		all KS Members
Kentucky	Commonwealth Trusts Lgl Svcs Inc	2,726		Whitefield; Lewis
	Northern Kentucky LAS Inc	3,646		Lewis; Rogers; Fletcher
	Central Kentucky Lgl Svcs Inc	3,065		Fletcher
	Legal Aid Society Inc	4,496		Lewis; Northrup; Lutz
	Western Kentucky Lgl Svcs Inc	5,769		Whitefield; Lewis
	Northeast Kentucky Lgl Svcs Inc	2,171		Lutz; Rogers; Fletcher
	Appalachian Res & Dev Fund of KY	8,899		all KY Members
Kentucky	Capital Area Lgl Svcs Corp	7,701		Tuskie; McCrory; Baker

Source: Legal Services Corporation, Office of Inspector General and Office of Information Management.

[illegible]

Source: *Los Angeles Times*, 1990. *The Pioneer* based on *Old* of *Maritime* Magazine.

Legal Services Corporation Grantee Caseloads

A Column Has Been Included for 1998 Numbers When They Become Available

	1997 Cases	1998 Cases	Member of Congress Served
Missouri			
Legal Aid of Western Missouri	17,184		Stallons; McCarthy; Danney; Burt
Parsonnet Area Lgl Aid Corp	2,345		Gagliardi; Stallons; Emerson
Legal Aid of Southwest Missouri	2,917		Stallons; Burt; Emerson
Lgl Svcs of Eastern Missouri Inc	21,107		Gagliardi; Danney; Emerson; Hahnel
Montana			
Montana Legal Services Assoc	8,158		Hah
Nebraska			
Lgl Svcs of S.E. Nebraska	2,640		Berouder; Barnett
Legal Aid Society Inc	4,190		Berouder; Terry; Barnett
Western Nebraska Lgl Svcs Inc	5,285		Barnett
Nevada			
Nevada Legal Services Inc	7,760		Berkey; Gibbons
New Hampshire			
New Hampshire Legal Svcs Inc	4,834		Sununu; Bass
New Jersey			
Cape Atlantic Lgl Services	3,983		Loflando
Warren County Lgl Services Inc	1,237		Roussme
Camden Regional Lgl Svcs Inc	7,258		Andrews; Loflando; Sedon; Smith
Union County Lgl Svcs Corp	684		Frank; Payne
Hudson County Lgl Svcs Corp	514		Holt
Bergen County Lgl Services	461		Roussme
Hudson County Lgl Svcs Corp	1,275		Rothman; Mandel
Lgl Aid Society of Morris County	226		Pascari; Fringhuyson
Middlesex County Lgl Svcs Corp	1,906		Pelone; Payne; Holt
Essex-Newark Lgl Svcs Proj Inc	9,220		Pascari; Payne; Fringhuyson
Passaic County Lgl Aid Society	4,496		Roussme; Fringhuyson
Somerset-Summit Lgl Svcs Corp	258		Roussme; Frank; Fringhuyson; Holt
Ocean-Monmouth Lgl Services Inc	1,276		Sanson; Smith; Pelone; Holt
Lgl Aid Society of Mercer County	498		Smith; Holt
New Mexico			
LAS of Albuquerque Inc	2,664		Wilson; Shores; Udall
Indian Pueblo Lgl Svcs Inc	1,360		Wilson; Shores; Udall
Southern New Mexico Lgl Svcs Inc	5,317		Shan
Northern New Mexico Lgl Svcs Inc	2,475		Wilson; Shores; Udall
New York			
LAS of Northeastern New York Inc	7,329		McNulty; Sweeney
Southern Tier Lgl Services	1,972		Houghton
Legal Aid for Broome and Chenango	2,728		Bashert; Walsh; Hinchey
Neighborhood Lgl Services Inc	10,561		Laffica; Quinn
Chemung Co Neighborhood Lgl Services	1,708		Houghton
Nassau/Suffolk Law Svcs Comm Inc	10,695		Forbes; Laffica; King; McCarthy; Adamant; Mastie
Chautauque County Lgl Svcs Inc	1,914		Houghton
LAS of Rockland County Inc	4,835		Kelly; Glavin; Sweeney; Hinchey
Legal Services for New York City	41,922		King; McCarthy; Adamant; Mastie; Crowley; Maden; Wiener; Young; Owens; Vallasquez; Fossella; Maloney; Pangel; Saravatz; Bright; Lowrey
Niagara County LAS Inc	1,469		Laffica
North County Lgl Services Inc	2,924		Sweeney; McHugh
Monroe Co Lgl Assistance Corp	9,411		Reynolds; Laffica; Houghton
Lgl Svcs of Central NY Inc	5,727		McHugh; Walsh; Reynolds; Houghton
LAS of Mid-New York Inc	5,328		McNulty; Bashert; McHugh; Hinchey
Westchester/Putnam Lgl Services Inc	6,301		Kelly; Sweeney

Source: Legal Services Corporation, Office of Inspector General and Office of Information Management.

Legal Services Corporation Grantee Caseloads

A Column Has Been Included for 1998 Numbers When They Become Available

	1997 Cases	1998 Cases	Member of Congress Served
North Carolina			
Lf Soc of Southern Piedmont Inc	3,611		Hayes, Myrick, Bologner
North Central Lf Asst Prog Inc	1,886		Eltheridge, Burr
Lf Soc of North Carolina	31,810		all H.C. Members
LAS of Northwest North Carolina Inc	1,436		Burr, Coble, McIntyre, Myrick, Bologner
North Dakota			
Lf Asst of North Dakota Inc	3,991		Pomroy
North Dakota Lf Soc Inc	1,038		Pomroy
Ohio			
Western Reserve Legal Services	3,682		Brown, Sawyer
Stark County Legal Aid Society	2,880		Regala
Legal Aid Society of Cincinnati	5,656		Chabot, Portman
			Osby, Kucinich, Jones, Brown, Regala
The LAS of Cleveland	5,494		LeTourneau
The LAS of Columbus	7,618		Osby, McIntyre, Keady, Pryor
Ohio State Legal Services	9,763		Pomroy, Osby, Strickland, McIntyre, Keady, Pryor, Regala, Hay
LAS of Dayton Inc	4,060		Post, Bookner
LAS of Lorain County Inc	2,056		Gilmer, Brown
Butler-Warren Lf Asst Assoc	2,540		Portman, Strickland, Bookner
Allen Co-Buchanan Area Lf Soc	1,777		Osby, Gilmer, McIntyre, Bookner
Rural LAS of West Central Ohio	2,974		Strickland, McIntyre, Bookner
Advocates for Basic Lf Equal Inc	4,964		Osby, Gilmer, Keady
The Toledo Legal Aid Society	2,431		Keady
Western-Midway LAS Inc	318		Regala
Northeast Ohio Legal Services	3,858		Brown, Traflet, Hay, LeTourneau
Oklahoma			
Oklahoma Indian Lf Soc Inc	1,418		all OK Members
Lf Aid of Western Oklahoma Inc	15,205		Walters, Wicks, Meeks, Lucas
Lf Soc of Eastern Oklahoma	12,535		Largier, Calhoun, Wicks, Meeks
Oregon			
Linn County Lf Aid Soc Inc	2,246		DeFazio
Oregon Legal Services Corp	16,373		all OR Members
Multnomah County Lf Aid Soc Inc	7,218		Wick, Blumenauer
Polston-Polk Lf Aid Soc Inc	2,457		Mealey
Pennsylvania			
Lynch Valley Lf Services Inc	1,871		Peterson
Bucks County Legal Aid Society	3,817		Greenwood
Delaware Co Lf Asst Assoc Inc	3,756		Brady, Weldon
Northwestern Legal Services	4,839		Peterson, Englen
Legal Services Inc	1,884		Shuster, Gooding
Lancaster Legal Services Inc	4,136		Peterson, Murtha
Central Pennsylvania Lf Soc	5,584		Hendrix, Shuster, Gelles, Gooding
Southern Allegheny Lf Aid Inc	2,109		Shuster, Murtha
Montgomery County Lf Aid Soc	946		Brady, Patterson, Bantle, Holders, Weldon, Greenwood, Meeks
Philadelphia Legal Assistance Ctr	14,431		Brady, Patterson, Bantle
Highland Lf Soc Assoc	10,740		Kirk, Marshall, Cuyler, Doyle
Northern Pennsylvania LAS Inc	1,520		Shenwood
Keystone Legal Services Inc	1,543		Peterson, J. Shuster
Southwestern Pennsylvania LAS Inc	5,021		Murtha, Meeks

Sources: Legal Services Corporation, Office of Inspector General and Office of Information Management.

Legal Services Corporation Grantee Caseloads			
A Column Has Been Included for 1998 Numbers When They Become Available			
	1997 Cases	1998 Cases	Member of Congress Served
Pennsylvania	Legal Aid of Chester County Inc.	1,619	Holden; Whitton; Pitts
	Lgl Svcs of Northeastern PA Inc.	1,147	Shawwood; Karpinski
	Susquehanna Legal Services	2,932	Petersen; Holders; Shuster; Shawwood; Karpinski
Puerto Rico	Community Law Office, Inc.	1,842	Romero-Barcelo
	Puerto Rico Lgl Services Inc.	603,17	Romero-Barcelo
Rhode Island	Rhode Island Lgl Services Inc.	5,201	Kennedy; Weygard
South Carolina	Neighborhood Lgl Assist Prog Inc.	7,770	Serfaty; Spence; Olyburn
	Palmetto Legal Services	4,541	Spence; Graham; Spence; Olyburn
	Carolina Regional Lgl Svcs Corp.	1,191	Olyburn
	Lgl Svcs Agency West Carolina Inc.	6,140	Graham; Oatfint
	Piedmont Legal Services Inc.	3,906	Graham; Oatfint; Spatt
South Dakota	S Dakota Plains Lgl Svcs Inc.	6,583	Thune
	Black Hills Legal Services Inc.	805	Thune
	East River Legal Services	1,488	Thune
Tennessee	Southeast Tennessee Lgl Svcs Inc.	4,125	Duncan; Warrig; Hickey
	Lgl Svcs of South Central TN Inc.	2,483	Warner; Hickey; Bryant
	West Tennessee Lgl Svcs Inc.	1,770	Hickey; Bryant; Turner
	Lgl Svcs of Upper East TN Inc.	4,434	Jenkins; Hickey
	Knoxville LAS Inc.	4,668	Jenkins; Duncan; Hickey
	Memphis Area Legal Services Inc.	7,209	Bryant; Turner; Ford
	LAS of Middle Tennessee	5,771	Clement; Gordon; Bryant; Turner
	Purcell Lgl Svcs of Tennessee Inc.	2,581	Warner; Hickey; Gordon
Texas	Legal Aid of Central Texas	10,326	Duggan; Edwards; Paul; Smith
	Coastal Bend Legal Services	8,051	Paul; Hinojosa; Ortiz; Bonilla
	Legal Services of North Texas	18,596	Turner; Johnson; Holt; Sessions; Barlow; Frost; Armes; Johnson
	El Paso Legal Assistance Society	8,835	Reyes; Bonilla
	West Texas Legal Svcs Inc.	15,068	Barlow; Edwards; Granger; Thorneberry; Santhorne; Combs; Smith; Bonilla; Frost; Armes
	Gulf Coast Legal Foundation	13,695	Turner; Archer; Brady; Lampson; Paul; Lee; Delany; Bonson; Green
	East Texas Legal Services Inc.	7,063	Sandlin; Turner; Holt; Sessions; Lampson
	Brewer County Lgl Aid Assoc Inc.	10,088	Gonzalez; Smith; Rodriguez
	Heart of Texas Lgl Svcs Corp.	3,041	Sessions; Edwards; Frost
	Texas Rural Legal Aid Inc.	17,400	Reyes; Smith; Bonilla; Rodriguez
Utah	Utah Lgl Svcs Inc.	8,711	all UT Members
Vermont	Legal Services Law Line of Vermont	4,990	Sanders
Virgin Islands	Lgl Svcs of Virgin Islands	1,106	Christensen
Virginia	Chert Con Lgl Svcs of SW VA Inc.	3,065	Boucher
	Charlottesville-Albemarle LAS	2,284	Seely; Goodie; Biley
	LAS of New River Valley Inc.	2,113	Boucher

Sources: Legal Services Corporation, Office of Inspector General and Office of Information Management.

Organ	1999 Cases	1998 Cases	Number of Alleged Sexual Offenses
Albany			
Albany Southern Union	9,115		Various: White, Black
Albany Southern Union	1,460		Various: Black, White, White
Albany Southern Union	4,482		Various: Black, White, White
Albany Southern Union	2,227		Various: White
Albany Southern Union	4,179		Various: Various
Albany Southern Union	2,264		Various
Albany Southern Union	333		Various: Various
Albany Southern Union	1,529		Various: Various
Albany Southern Union	3,346		Various: Various, Various
Albany Southern Union	1,379		Various: Various, Various
Albany			
Albany Southern Union	2,038		Various: Various
Albany			
Albany Southern Union	2,335		Various
Albany Southern Union	3,529		Various: Various
Albany Southern Union	8,449		Various: Various, Various
Albany			
Albany Southern Union	2,13		Various: Various, Various
Albany Southern Union	2,329		Various: Various, Various
Albany Southern Union	8,449		Various: Various, Various, Various
Albany Southern Union	2,329		Various: Various, Various
Albany			
Albany Southern Union	1,375		Various
Albany			
Albany Southern Union	1,375		Various

Source: Legal Services Corporation, Office of Inspector General and Office of Information Management.

Mr. GEKAS. We allot to the gentleman from New York 5 minutes for purpose of questioning.

Mr. NADLER. Thank you.

First, Mr. Chairman, I ask unanimous consent to insert into the record a letter to Edwin Fulner, the president of the Heritage Foundation, from Mr. Quatrevaux, whom we heard earlier today, the inspector general, about the dishonest methodology of the Heritage Foundation report.

Ms. THOMAS. Could I get a copy of that? That's never been given to us.

Mr. NADLER. Certainly.

Mr. GEKAS. The gentleman makes conclusions that he wants on the record?

Mr. NADLER. He alleges dishonest methodology. I'm not saying I agree or disagree. I ask that it be——

Mr. GEKAS. Without objection.

Mr. NADLER [continuing]. Entered into the record.

Mr. GEKAS. It will be in the record.

[The information referred to follows:]

LEGAL SERVICES CORPORATION,
OFFICE OF INSPECTOR GENERAL,
Washington, DC, August 2, 1999.

DEAR CONGRESSMAN: I am writing to provide a copy of my letter to the President of The Heritage Foundation regarding an article in the July 22, 1999 edition of its publication, *Backgrounder*. The letter points out serious errors of fact.

Please contact me if you have questions or would like further information about the issues raised in the article.

Sincerely,

E. R. QUATREVAUX, *Inspector General*.

Enclosure

LEGAL SERVICES CORPORATION,
OFFICE OF INSPECTOR GENERAL,
Washington, DC, August 2, 1999.

EDWIN J. FEULNER, JR., *President*,
The Heritage Foundation,
Washington, DC.

DEAR MR. FEULNER: It is with profound disappointment that I write to inform you of serious errors of fact contained in a recent Heritage Foundation *Backgrounder* article by Virginia Thomas and Ryan H. Rogers (No. 1312, July 22, 1999).

Let me first say that I have had great respect for the Foundation and its reports for many years. During my Army career, I always thought Heritage reports on national security issues contained excellent analyses. Unfortunately, the July 22nd article fails to maintain fundamental standards of research integrity and stands in stark contrast to the usual quality of reports issued by Heritage.

The *Backgrounder* article attributed to me a statement made by John McKay. Such errors happen. The article also lists as "The inspector general's findings" information relating to six specified LSC grantees. But my office did not audit two of the six grantees cited. Such errors can happen, I suppose, even though footnotes for the two findings cite sources other than the Office of Inspector General.

Some types of errors cannot be explained. The *Backgrounder* article recommends that the "Federal False Statements Act" be applied to LSC and its grantees. However, this Act (13 USC §1001) already applies. The Act appropriating fiscal year 1996 funding to LSC, and three subsequent appropriations acts, required that all grantees enter a contractual agreement "to be subject to all provisions of Federal law relating to the proper use of Federal funds, the violation of which shall render any grant or contractual agreement to provide funding null and void, and, for such purposes, the Corporation shall be considered to be a Federal agency and all funds provided by the Corporation shall be considered to be Federal funds provided by grant or contract."

I recommended the adoption of this provision to the House appropriations subcommittee in early 1995. When it became law, LSC implemented this provision in its regulation 45 CFR 1640, making explicit the application of the Act recommended by the *Backgrounder* article.

I understand that one of the authors is an attorney, so it is difficult to understand how the article could recommend adding to the law a provision that is already there. Ms. Thomas moderated a Heritage program in June where a disgruntled former LSC employee, Kenneth Boehm, asserted that federal fraud statutes did not apply to LSC and its grantees. It appears that the author simply accepted Mr. Boehm's assertion without reading the law.

The article also cited a "letter to the editor" by a disgruntled former grantee employee, one of thousands legal services lawyers, as if it were credible evidence of a systemic problem. Some other statements in the *Backgrounder* article appear to have come from another disgruntled former LSC employee. Such reliance on individuals with an obvious bias, without independent confirmation, is a violation of basic principles of research and analysis.

The article's bias is revealed by the chart entitled "Timeline: What Did LSC Officials Know and When Did They Know It?" The chart omitted the critical fact that auditors completed work at LSC grantees in San Diego and Miami—the only two audits that revealed very large inaccuracies—on October 22nd and November 24, 1998, after Congress voted on the LSC appropriation. It also omitted the fact that I briefed the appropriations subcommittee staff in February of 1999 before the annual hearing. These facts are material to the question posed by the chart's title, and are contained in documents cited by the article, yet these facts were omitted by the authors.

If I were the Heritage Foundation Inspector General, I would recommend that Heritage establish internal controls to preclude a recurrence of such a serious lapse in scholarship. Those controls would include an independent review to ensure there is documented support for information presented as facts.

I am sure you agree that providing members of Congress and the public with erroneous information does not serve the nation's interests. I wish you success in overcoming this blemish on Heritage's otherwise fine reputation.

Sincerely,

E.R. QUATREVAUX, *Inspector General*.

Mr. NADLER. Thank you.

Second of all, Mr. Boehm—

Mr. BOEHM. Yes, sir?

Mr. NADLER [continuing]. You state, as your recommendation, on the basis of the alleged false reports of all this data, that the legislation should eliminate Legal Services Corporation and we should block grant funds for legal services to the States.

Mr. BOEHM. That's what this committee had endorsed for years.

Mr. NADLER. And you're endorsing that recommendation?

Mr. BOEHM. I think that's a good idea. Yes, sir.

Mr. NADLER. Okay. Now, under the current LSC legislation, the LSC, of course, grants—is a grant distributing agency.

Mr. BOEHM. Correct.

Mr. NADLER. It doesn't perform any legal services. Agents, local agencies—Legal Aid of New York, Legal Services of Wyoming, whatever, local groups apply and bid for grants and they get the grants, and LSC is dependent on their reporting of what they've done with the money and of their statistics, and they can audit, and so forth, but they have to essentially depend on what they're told.

They give grants. The local agency does the work and reports what they've done.

Mr. BOEHM. That's correct, sir.

Mr. NADLER. Okay. Now, if we were to block grant the money because, or partially because, we don't think that the reporting has been done right, if we were to block grant the money we'd give "X"

dollars to the State of Mississippi, and Mississippi would then put out bids to the same agencies, would it not, or to other agencies?

Mr. BOEHM. Well, they'd put it out to the public.

Mr. NADLER. They'd put out bids to local agencies?

Mr. BOEHM. That's correct.

Mr. NADLER. Exactly as LSC does?

Mr. BOEHM. Exactly.

Mr. NADLER. So how would that differ in any way?

Mr. BOEHM. Well, in this very important respect——

Mr. NADLER. Excuse me. Other than putting the States in charge of distributing money instead of one Federal agency doing grants.

Mr. BOEHM. In this very important way, and that is, most of the programs out there that provide legal services to the poor do not receive their money from Legal Services Corporation, just as the overwhelming amount of help to the poor——

Mr. NADLER. Where do they receive their money from?

Mr. BOEHM. There are more than a thousand groups out there that provide funding and provide help and legal assistance to the poor that are not funded by Legal Services. They're run by, in many cases——

Mr. NADLER. I'd ask that you submit a list of some and who these other funding agencies that I'm unaware of. I mean, if there's some other major funding agency duplicating the work of LSC, it's news to me, and I'm sure to Congress. I'd like to hear about it.

[The information referred to follows:]

ADDITIONAL INFORMATION ON PRO BONO GROUPS

During the September 29, 1999 hearing on the Legal Services Corporation (LSC), there was a discussion on pro bono legal assistance which was not provided directly or indirectly with funds from LSC. There is no debate that the number of organizations in the United States providing some form of legal assistance far exceeds the less than 300 programs funded by LSC. When given the opportunity to challenge this fact, LSC officials declined to do so.

Having said that, exact numbers are forever changing as groups come and go but the total number is clearly in excess of a thousand.

Former LSC Inspector General David Wilkinson has extensively studied pro bono legal assistance in the United States and determined that there were 1,350 pro bono groups not receiving any assistance from LSC. He further calculated that the combined budgets of these groups exceeded \$200 million. (see: David Wilkinson, *Legal Services for the Poor: Is Federal Support Necessary?*, Alternatives in Philanthropy, Capital Research Center, November 1996).

Others involved in pro bono work not affiliated with LSC have come to similar conclusions. Allyson Tucker, Executive Director of the Individual Rights Foundation of Los Angeles, testified before a hearing of the House Judiciary Subcommittee on Administrative and Commercial Law on June 26, 1996 that more than 1200 foundations offer the services of pro bono lawyers. She cited her own group as having a network of 450 attorneys who provide pro bono assistance.

While most pro bono groups operate locally and there is no inclusive nationally directory providing an address list, the American Bar Association publishes a limited, annual listing of such groups entitled *Directory of Pro Bono Programs*. The current issue provides listings of more than 800 groups in a state-by-state format. A number of those listings can also be found at the ABA's web page (<http://www.abanet.org>) The ABA's directory appeared to leave out organizations which provided pro bono assistance but did not share the political orientation of the ABA.

Finally, in addition to the pro bono resources already cited, the majority of law schools now have clinical programs which provide legal assistance to the poor by advanced students under the supervision of law professors and licensed attorneys.

Mr. NADLER. Let me ask a different question.

Mr. Boehm, you seem to think that a lot of what LSC does could also be done—in fact, you say, I think, and, Ms. Thomas, you say

in your report, also, that LSC, in effect, should be eliminated, and a lot of the—we can rely on pro bono work that many other firms do. Correct?

Mr. BOEHM. Correct.

Mr. NADLER. Okay. Mr. Boehm, how much pro bono work has your firm done?

Mr. BOEHM. Our firm doesn't do pro bono work.

Mr. NADLER. Thank you. How much pro bono—

Mr. BOEHM. It's not a law firm, sir.

Mr. NADLER. Are you a lawyer?

Mr. BOEHM. I'm not a lawyer in practice here. I'm a lawyer in Pennsylvania.

Mr. NADLER. And how much has your law firm in Pennsylvania done?

Mr. BOEHM. I haven't been there since 1976, sir.

Mr. NADLER. Okay. So you have done nothing about pro bono work.

Mr. BOEHM. I've—

Mr. NADLER. Thank you.

Ms. Thomas, how much pro bono work has the Heritage Foundation provided of LSC-eligible work?

Ms. THOMAS. Mr. Nadler, I appreciate your question and I would ask you—

Mr. NADLER. Thank you.

Ms. THOMAS [continuing]. How much have you done?

Mr. NADLER. I don't practice law.

Ms. THOMAS. Okay.

Mr. NADLER. But how much has—

Ms. THOMAS. We do many things to help—

Mr. NADLER. LSC-eligible. I don't mean ideologically-motivated law suits.

Ms. THOMAS. We do many things to help the poor.

Mr. NADLER. Such as?

Ms. THOMAS. Such as our education policy, such as—

Mr. NADLER. Excuse me. That's an ideological—

Ms. THOMAS [continuing]. Funding for 75—

Mr. NADLER. How much assistance with law suits that the LSC would be eligible—she's not answering my question. How much—what I'm asking is, of LSC-eligible, under the restrictions that we have placed on the LSC, how much of such kinds of LSC-eligible pro bono work has the Heritage Foundation provided? Any?

Ms. THOMAS. I do as much as you do.

Mr. NADLER. Okay. Thank you.

Mr. PICKERING, how much has your firm provided?

Mr. PICKERING. I'm sorry. I didn't hear you, sir.

Mr. NADLER. You said that your firm provided 10 percent of all your work as pro bono assistance?

Mr. PICKERING. Yes, or other forms of public service. And we have a tradition within our firm where over 100 lawyers in the firm did more than 100 hours each individually.

Mr. NADLER. Thank you.

And let me ask, if every firm in the country were as exemplary as your firm—which is an absurdity, of course, because they

aren't—but if every firm were, would that be able to handle the legal needs of the poor in this country without LSC?

Mr. PICKERING. No. No more than if every doctor in this country contributed at least 10 percent of their services would it take care or relieve the need for having Medicare or Medicaid. The medical profession comes nowhere to doing what the legal profession does.

Mr. NADLER. Thank you. And let me ask you one final question, if I may.

The recommendation has been made that we'd eliminate LSC and block grant funds to the States. What would be the impact of doing that, in your opinion?

Mr. PICKERING. I don't think it really changes anything because the Legal Service operation is locally controlled. LSC makes grants. It would simply change from the Federal agency making the grants to a State agency, but they would be making—would have to make it to the same organizations, and the local control is there under the program. And, believe you me, local bar associations and committees have a great deal to say about the kind of services which are provided.

As a member of the District of Columbia's Bar Foundation, I have personally visited 60 grantees here in the District of Columbia of our funds and funds from the Legal Services Corporation, and we make our grants on the basis of what those organizations do. We go out. We see. We interview their clients.

If you want any more local control, I don't know where it comes from.

Mr. NADLER. Thank you.

Can I have an additional 30 seconds, Mr. Chairman?

Mr. GEKAS. Without objection.

Mr. NADLER. Thank you.

Mr. Pickering, in terms of the efficacy of reporting, if we were to block grant to the 50 States, would that accomplish anything other than making the job of ensuring the accuracy 50 times worse?

Mr. PICKERING. I think that would be a fair estimate.

Mr. NADLER. Thank you, sir.

Mr. GEKAS. Maybe 40 times.

The gentleman from Ohio is recognized for 5 minutes.

Mr. CHABOT. Thank you.

First, Ms. Thomas, would you explain for folks out there what the Heritage Foundation is and what its purpose is, and maybe what the Brookings Association does and what you might speculate as to how much legal service work they might do?

Ms. THOMAS. That's a good point, Mr. Chabot.

The Heritage Foundation is a think tank in Washington that has been there 25 years that believes in limited Government, lower taxes, strong defense. We are involved in a variety of policy-making matters.

My function at the Heritage Foundation is to do Government reform work. I work a lot right now with a gentleman at Brookings named Paul White, and we are working together under the auspices of the Pu Research Foundation to work on bringing quality, capable people to serve in public office or in an appointed or an elective office.

We are looking at building performance measures into Government to make sure that Government is running effectively, smoothly, efficiently.

Heritage has been involved in a variety of things, you know. We have partners across the ideological board. Some, we stand by ourselves, much to the frustration of some of the republicans in elected office, I might add, when we do some criticism of the Congress or of the Executive Branch.

So I think we have been there a long time and we'll be there a lot longer, and we do very similar work to Brookings and AEI and the Hudson Institute, Reason Foundation.

Mr. CHABOT. And you're not a law firm that might, as Mr. Pickering's firm would do, might be involved in pro bono work?

Ms. THOMAS. That's correct.

Mr. CHABOT. As I did when I was a private attorney, myself, but—

Ms. THOMAS. That's correct, and I am not a practicing member of the bar, myself. And I think we have two lawyers. Ed Meese is a part of our staff, and he has one other lawyer, perhaps, working for him that works specifically on some legal issues.

Mr. CHABOT. Okay. Thank you.

Mr. Boehm, you were responding to a question from Mr. Nadler about other sources of funding for legal work, and I think he had other questions he wanted to ask, so you didn't get to expound upon that.

Mr. BOEHM. Right.

Mr. CHABOT. Would you like to talk about some of the—Legal Services, apparently, is a relatively small proportion of the pro bono work that gets done out there. Would you elaborate?

Mr. BOEHM. I would love to, Congressman Chabot. In fact, I'll start with the home State of New York. Mr. Nadler, New York State last year provided, I believe it was two million hours of legal services to poor people.

Mr. NADLER. Who did?

Mr. BOEHM. The pro bono bar. The number of lawyers in this country is about 900,000, give or take, less than that in private practice. The amount of legal services provided by the Legal Services Corporation of all the legal assistance—we're not even talking criminal, because obviously that is covered by the Sixth Amendment, but we're talking civil—is, at most, 10 percent. More like 5 percent.

Mr. CHABOT. So there is a tremendous amount of legal services that are provided to the poor across this country—

Mr. BOEHM. That's correct.

Mr. CHABOT [continuing]. That has nothing to do with Legal Services Corporation; is that correct?

Mr. BOEHM. That's correct. That's where most of it is, in fact.

Mr. CHABOT. Okay.

Ms. Thomas, let me follow up on something that you were talking about.

As you mentioned, Legal Services Corporation is not the only organization that Congress funds. There's a whole lot of other groups that we fund. And is it fair to say that they're probably watching us? And this is an incident where those that are in the business

of getting funding from Congress are aware of the fact that these—I know they don't like the terms "the books were cooked," or whatever you want to say, the numbers were inflated.

We were given numbers which proved to be inaccurate and we were left with those numbers for what I would consider to be an unreasonable period of time.

What is your concern about if we essentially take no action and increase the funding to this organization after getting bad numbers? What's your concern, again, about how these other groups might look at that?

Ms. THOMAS. Well, in 1993, when Congress had the wisdom to pass the Government Performance and Results Act in a very bipartisan way—I think it was on the suspension calendar in the House and it was, you know, very bipartisan, the Senate—President Clinton signed it, and this has been a tool that has been embraced by Vice President Gore, to Dick Armey, to Senator Thompson, and a number of leaders in the House and Senate. All the committee chairman actually have been in the process of using the Results Act in a bipartisan way, as far as I know, to drive the performance measures into these programs, do good oversight of what people are getting for their taxpayer dollars being spent.

This has been an ongoing effort that has been very quiet, not a lot of media attention, but it is having huge ramifications at the agency level.

I just the other day spent half the day with NAPA, the National Academy of Public Administration, where they have a consortium of 30 agencies who are trying to change their culture into a more performance-based culture, and they are very much interested in how is Congress going to react once they realize our data is bad or we can't show that we're being effective, and so this is a bit of a test case, Mr. Chabot, that people, agencies around Washington are watching.

It may not get media headlines. It may not be on the nightly news. But it is a significant tool for accountability that people don't know yet whether it is going to really work or not.

Mr. CHABOT. Thank you.

Mr. Chairman, could I ask for unanimous consent for an additional 42 seconds to ask one final question?

Mr. GEKAS. Without objection.

Mr. CHABOT. And my final question would be: we've heard the phrase, almost like a mantra, several times, that there was "no fraud" found in this, and that may be relevant when it comes to criminal charges or something, but should we be satisfied that, just because fraud wasn't found, the fact that we were given numbers that were inaccurate, shouldn't we still take that very seriously, even though it might not have been fraud?

Mr. BOEHM. I think so.

San Diego, case in point—14,000 phone calls by non-lawyers—these are high school graduate intake workers telling people to phone some place else—14,000 calls where the people weren't even checked to see if they were eligible counted as legal cases.

You might as well have a tape recording and everybody who calls and presses four to get referred some place else counts as a legal case.

Every lawyer in the Legal Services program knows you need to qualify somebody as eligible. Everyone knows that legal case can't be something that a high school graduate tells somebody to phone some place else.

Maybe that's not fraud, but they knew that what they were doing was padding cases to look good to Congress and to their other funders, and that when a 20-year veteran in New York up in West Chester New York, a 20-year veteran of Legal Services, quits his job out of disgust because the secretary's phone call is being counted as a case, I'd say that maybe there's not fraud there because they haven't looked.

That letter came out in May. We finally filed a complaint with the Corporation about a week ago saying, "Would you please investigate this?" I got a phone call last night from the Corporation saying, "How do you know this guy was from this program?" This was from May in a national publication he said he quit the Corporation because of the practice of counting phone calls by secretaries as legal cases.

Again, fraud or not fraud, they were doing it to impress their funders and they knew it wasn't a case.

Mr. CHABOT. Thank you.

Mr. GEKAS. We thank the gentleman. The time of the gentleman has expired.

We turn to the gentleman from Massachusetts for 5 minutes.

Mr. DELAHUNT. Yes, I'll be very brief.

Your observation about the 20-year veteran of Legal Services, can I presume, then, that this is only a recent phenomenon and maybe for 19 years he didn't have pangs of conscience? Is that a fair statement?

Mr. BOEHM. He didn't say. His pangs of conscience apparently were sufficient to have him quit his job that he'd held for 20 years.

Mr. DELAHUNT. Right, but, you know, he hung in for 20 years, didn't he?

Mr. BOEHM. He hung in for 20 years.

Mr. DELAHUNT. He hung in for 20. Finally got to him, though? Finally got to him in year 20?

Mr. BOEHM. Well, you'd have to talk to him.

Mr. DELAHUNT. I don't want to go any further with that—

Mr. BOEHM. You'd have to talk to him.

Mr. DELAHUNT [continuing]. Because that is hearsay evidence. I think we can all acknowledge that.

The question that I want to pose to both of your concerns—and Ms. Thomas was alluded to earlier—the 5 percent figure in terms of unmet needs. And I'm sure you would have a different solution as to how that unmet need should be met, but you indicated, or at least Mr. Nadler quoted the Heritage Foundation as having indicated that only 5 percent of the poor's need for legal services is being met. Is that accurate?

Ms. THOMAS. That's our best understanding on what we have been able to research. And I really respect—I think that's where the debate is, Mr. Delahunt. How do we get the most effective help to those people at the end of the line?

Mr. DELAHUNT. Okay.

Ms. THOMAS. And I think we all can agree on that point, and I do think we would disagree on how to fill that gap, and I'm just not a big believer in big Government solving every problem.

Mr. DELAHUNT. And I respect your position, but I think it is important that we hear that figure, because that is really disconcerting, because, in any viable democracy—I think it was Mr. Pickering who alluded to the promise of the Declaration of Independence—it is really disconcerting to think that 95 percent of the poor do not have access to the legal system, to justice.

Mr. Pickering, I think you indicated 22 percent?

Mr. PICKERING. That's based on the most accurate information that a massive survey done by the American Bar Association several years ago, but whether it is 95 percent or 80 percent doesn't make—

Mr. DELAHUNT. It's unacceptable.

Mr. PICKERING. It doesn't make too much difference. We simply are not fulfilling our American promise of access to justice. We need the Legal Services Corporation. We need the private bar. And we need the organized bar in there.

Mr. DELAHUNT. Mr. Boehm—

Mr. BOEHM. Yes, sir?

Mr. DELAHUNT. Would you take the 80 percent figure or the 95 percent figure?

Mr. BOEHM. Those legal needs studies have varied widely as to what is a legal need. I've seen questions saying—

Mr. DELAHUNT. What's your best judgment? You've been—

Mr. BOEHM. I'd say maybe about 30 percent. I'd say it extends to the middle class, as well, who can't afford attorneys, and I think the answer is really de-lawyerizing lots of legal problems.

Mr. DELAHUNT. So I don't disagree, necessarily, that access to the justice system for the middle class is severely restricted. And you say 30 percent as opposed to 95 percent or as opposed to 80 percent as opposed to 5 percent?

Mr. BOEHM. Congressman Delahunt, it depends on how you define "legal need" versus "legal want." If somebody offered me, as a 50-year-old attorney, unlimited legal service, I can think of some people I'd want to sue and all sorts of things I'd like to do. You really have to define the term.

And, because the different surveys define it different ways—"Have you ever had a problem with a store?" If you answer yes and you didn't have a lawyer, that's an unmet legal need. I've had lots of problems with stores.

Mr. DELAHUNT. But you would acknowledge—

Mr. BOEHM. It's unmet.

Mr. DELAHUNT [continuing]. Or you would agree that there is an unmet—

Mr. BOEHM. I would definitely agree. Yes.

Mr. DELAHUNT. Thank you.

Mr. GEKAS. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

First, I'd like to apologize to the Chair and to the other witnesses for having to be out for a little bit. I had to go to the Rules Committee on another bill.

I'd like to ask unanimous consent that a letter from the North Carolina Bar Foundation Association dated September 29, 1999, be made a part of the record.

Mr. GEKAS. Without objection, it is so ordered.

[The information referred to follows:]

NORTH CAROLINA BAR ASSOCIATION,
Gary, NC, September 29, 1999.

Hon. MELVIN L. WATT,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE WATT: On behalf of the North Carolina Bar Association, I am pleased to submit this letter supporting the Legal Services Corporation funded programs in North Carolina. As you may know, the Board of Governors for the North Carolina Bar Association also serve as the members of Legal Services of North Carolina, Incorporated—the largest of the four LSC grantees in North Carolina. The North Carolina Bar Association formed Legal Services of North Carolina, Incorporated many years ago.

Legal Services of North Carolina has a long history, twenty-five plus years, of serving people in North Carolina living in poverty. Many of the legal service attorneys and staff members have been with legal services for all of their professional careers; in some instances that is 15 or more years. Legal services funding must continue in order that people who cannot afford an attorney be able to be represented in court.

Right now, the legal services community, the North Carolina Bar Association and other non profit community based organizations are working to help the flood ravaged areas in North Carolina. The flooding has virtually covered some towns and has halted operations in others. Many of the persons affected by the flooding will be seeking assistance from local field programs. Many of those same people, who two weeks ago, would not have qualified for legal services may now qualify. This will certainly impact those local programs that have counties in their service areas. Additionally, this will impact other legal services programs as this strains the resources available when services in the eastern part of the state increase. As many have said, "this flood is of Biblical proportions." People also estimate that the impact of the flooding will be felt throughout North Carolina for years to come.

I urge you to review the enclosed information about what legal services is doing for the good of North Carolina.

Thank you.

Sincerely,

ALLEN HEAD, *Executive Director*

cc: Gina Reyman
Melissa Pershin
John Saratt
Ted Fillette
William Scoggin
John Jernigan

Mr. WATT. That letter basically documents some of what Mr. Pickering was saying when I came back into the room about the outstanding efforts that the Legal Services organization and the legal services community and bar association are providing to residents of North Carolina in this time of disaster in North Carolina.

Beyond that, let me just say a word or two to Ms. Thomas.

I don't think any of us—I certainly don't argue with the need for accurate reporting. I think it is important for us to have accurate information, and I trust that this oversight and prior audits will result in more accurate information being provided, and if it serves that purpose I think we will have done an outstanding service.

I don't disagree with Mr. Boehm that a substantial part of legal services to the poor are being provided by agencies other than the Legal Services Corporation and legal services organizations in local communities.

I would say that a substantial amount of that non-legal-services organization provision of legal services is coordinated and marshalled through the efforts of the Legal Services Corporation.

I was the president of the Mecklenberg County Bar, 1,800-member bar, several years before I came to the Congress. Probably 80, 90 percent of the work for poor people, legal services for poor people, was done by the organized bar, volunteers from firms like Mr. Pickering's and from members of the bar who were volunteering their time.

But every single part of it was done and coordinated through the efforts of the Mecklenberg County legal services organization because they were the only ones who, when the lawyers went back to their respective law firms to do their services, those people still needed to have somebody to call and to consult with, and the cases needed to be—the intake needed to be done so that when Mr. Pickering's law partners came to provide the legal services, they could actually provide the legal services rather than shuffling papers and doing things that non-legal people could do.

So let's not get hung up on that. I think the point to be made is the one that Mr. Delahunt was trying to make and that you, Ms. Thomas, acknowledged and supported, which is that it is unacceptable, and Mr. Pickering acknowledged and supported it's unacceptable in our country to have 95 percent of the people or 80 percent of the people or even 50 percent of the people not having effective recourse to find justice or believe that they can find justice because they don't believe they have access to the courts.

And it's that aspect of it that we need to get preoccupied with, and in that regard it is kind of ironic that we spend so much time brow-beating misreporting, which I abhor as much as you do, and we haven't really had yet, since I've been in this Congress, a hearing about the crying need for under-served, under-service to the poor in the legal context.

It is unforgivable—and I don't accuse anybody on this panel of being in that position, or even on this subcommittee—that a number of people were not talking about block granting the Federal assistance to local communities. They were talking about doing away with legal services for the poor, all together, just as they were talking about doing away with the Department of Education and housing programs and all of the other services—Medicaid included.

So I want to thank the chairman for the oversight hearing, but I hope the chairman will also hear the real problem—and this is a real reporting problem. I hope this solves it. I trust that it will serve a useful purpose.

But we do ourselves a real disservice when we focus more attention on what somebody put on a piece of paper about the number of calls or cases that they got than the fact that there was nobody there when people really needed them, and we are not providing enough resources to meet that need.

I thank the chairman and yield back.

Mr. GEKAS. The gentleman yields back the balance of his time. Mr. Pickering seeks 42 seconds for one statement.

Mr. PICKERING. Mr. Watt has brought something to my mind, and that is the great service the Legal Services Corporation does in partnering major law firms with various legal service providers.

That's done here in the District of Columbia. Our firm, for example, is partnering with the University of the District of Columbia Law School's clinical program in meeting its computer needs, and that is a very useful function which the Corporation provides.

Mr. GEKAS. We thank the witnesses.

I hope that each witness will assent to the prospect of individual inquiries to be made by members of the committee in writing.

With that, we express our gratitude and dismiss the panel.

This hearing is adjourned.

[Whereupon, at 4:52 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 15, 1999.

Hon. GEORGE GEKAS, *Chairman,*
Subcommittee on Commercial and Administrative Law,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Enclosed, please find a copy of a letter from John McKay, President of the Legal Services Corporation, which was received by every member of the Subcommittee. Mr. McKay's letter responds to many of the allegations made against LSC by some witnesses at our September 29, 1999, hearing.

I ask that Mr. McKay's letter, and the attached materials, be made a part of the hearing record.

Thank you for your time and attention to this matter.

Sincerely,

JERROLD NADLER, *Ranking Democratic Member,*
Subcommittee on Commercial and Administrative Law.

enclosure

LEGAL SERVICES CORPORATION,
Washington, DC, October 6, 1999.

Hon. JERROLD NADLER, *Ranking Member,*
Subcommittee on Commercial and Administrative Law,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR RANKING MEMBER NADLER: I am writing in response to your request for a rebuttal of the erroneous points made in the testimony of Virginia Thomas of the Heritage Foundation and Ken Boehm of the National Legal and Policy Center during the September 29, 1999, hearing before your Subcommittee concerning the Legal Services Corporation's (LSC) Case Service Reporting (CSR) system. I appreciate the opportunity to have included in the official hearing record LSC's position on the issues raised by these individuals.

Testimony of Virginia Thomas, Senior Fellow, The Heritage Foundation

Ms. Thomas made several claims in her oral testimony that seriously and incorrectly magnified the significance of the problems in LSC's case reporting.

1) *Allegation:* Ms. Thomas claimed that the 1999 LSC Factbook was "due" to Congress in May, and is now four months late.

LSC Response: The LSC Factbook is never "due" to Congress because it is a document that is produced voluntarily by LSC. In fact, from 1992-1996, LSC did not produce a Factbook at all because it felt the information contained in its annual Budget Request and Annual Report was sufficient to communicate information on program activities to Congress. The Factbook was resumed in 1998 (containing 1997 data) by staff initiative.

2) *Allegation:* Ms. Thomas also claimed that LSC dramatically reduced its estimate on clients served from 1.9 million to 1.1 million, and she used this reduction to cast suspicion on LSC's general credibility to provide information to Congress.

LSC Response: Ms. Thomas confused the fact that LSC's initial estimate of 1.9 million combined the total of cases *closed* in 1997 with the total of cases still *open* at the end of the year. LSC's figure of 1.1 million for 1998 only includes closed cases, and was reduced from an original estimate of 1.33 million closed cases after LSC required its grantees to complete a self-inspection of their 1998 data.

3) **Allegation:** Ms. Thomas' Backgrounder that she submits as her written testimony, entitled "Time for Congress to Hold the Legal Services Corporation Accountable," uses incomplete information and misuses quotes by LSC officials to back up an argument that is fundamentally flawed. This article uses the following quote from an LSC "Message from the President" to claim that case statistics are used by Congress to determine LSC's appropriation, and that LSC officials were aware of this fact and were therefore attempting to hide CSR problems from Congress: "Case statistics play an essential role in budget requests and the performance plan submitted by the Legal Services Corporation to Congress each year. Therefore, the reliability of case statistics submitted by programs to LSC is vital to obtaining continued Federal funding for Legal Services . . . This type of information holds great promise for securing increased Federal funding."

LSC Response: Unfortunately, several sentences from the actual quote are omitted in Ms. Thomas' testimony, changing both the nature and meaning of the statement. It was actually meant to emphasize the actions LSC was taking to ensure it received accurate data from its grantees and to explain that it recognized counting cases did not fully capture the scope of activities conducted by its grantees. The document from which this quote was taken is attached for the record.

4) **Allegation:** Ms. Thomas also makes the argument that federal funding may not most effectively serve the legal needs of the poor. She states: "The responsibility for providing legal services to the poor belongs more appropriately to state and local officials and to private-sector institutions—those closest to the people in need of assistance."

LSC Response: LSC receives a yearly appropriation from Congress to administer grants to local programs so they can provide legal services; currently LSC gives grants to 257 programs that serve every state and county in the nation. These programs are independent, non-profit corporations that are governed by Boards of Directors representative of the local community, appointed by local bar associations and partly consisting of client representatives appointed by client groups. The role of LSC is, however, an essential component of the national legal services program. Other sources of funding are simply not available in some parts of the country; in these areas legal services for the poor would be effectively terminated if LSC was completely or even partially defunded. In other areas, the base funding provided by LSC is what helps a program leverage funding from other sources and is the infrastructure that holds the entire system together.

5) **Allegation:** Ms. Thomas faults LSC for not meeting all of the legal needs of the poor. Her article states: "No one denies that the less privileged in society benefit significantly from free legal assistance. However, the LSC services only about 5 percent of the eligible poor. The lives of thousands of people have been improved by the efforts of pro bono attorneys and the ad hoc network of organizations and people, such as private foundations, churches, and synagogues, that have stepped up to assist the poor when they are in need."

LSC Response: LSC has attempted for years to serve a greater percentage of eligible low-income people. However, LSC has never been funded adequately enough to meet its original goal of providing two legal services attorneys per 10,000 poor people. For example, in 1998, the federal appropriation per poor person was less than \$8.00. LSC grantees help coordinate the *pro bono* efforts to which this article refers. Each program is required to dedicate at least 12.5 percent of the funding it receives from LSC to Private Attorney Involvement (PAI). As a result there are now 45,000 lawyers providing representation through LSC-funded *pro bono* programs. Local legal services programs provide the necessary structure and management that *make it possible* for private attorneys to become involved and contribute free legal services. LSC is a model public-private partnership, and works with the private bar and other entities to leverage millions of dollars for legal services. Knowing it must work with limited federal dollars, LSC welcomes the participation of any groups willing to help in its efforts to meet the legal needs of poor Americans.

6) **Allegation:** Ms. Thomas makes several suggestions on how Congress should respond to LSC's case reporting problems, one of which is the following: "Congress should specify better performance measures that would include credible data on the quality, and not simply the quantity, of the services the LSC provides to the poor."

LSC Response: LSC agrees. Many critical legal services that do not meet the definition of a "case" are provided to individuals by LSC grantees. Although some cases were invalidated because they did not result in "legal assistance," they nonetheless

were proper and valid services, such as distribution of legal educational materials, assistance with pro se matters, and referrals to other non-profit agencies. In today's world, many legal problems can be solved outside of the courtroom or prevented in the first place. LSC has begun working on developing a new system that will reflect more types of services that are being delivered by its grantees. This new system thus will portray more clearly the range of legal services provided to low-income Americans.

Testimony of Kenneth F. Boehm, Chairman, National Legal and Policy Center

In his written testimony, Mr. Boehm makes several false accusations about LSC and its handling of the CSR issue:

1) *Allegation:* Mr. Boehm says "Even after the October 1998 vote, Congress was never informed that LSC had found a serious pattern of wildly inflated case totals" and suggests that the Corporation lied to Congress about the statistical problem by stating "[w]hen the cover-up was exposed by Congress and the Associated Press and the seriousness of the falsified case totals confirmed by the GAO investigation, LSC officials came up with a string of excuses, all of which have been shown to be as false and invalid as the case totals."

LSC Response: At the time it released the Factbook in June, 1998, summarizing the 1997 CSR data along with other information gathered from grantees, LSC had only the preliminary feedback from the Inspector General on the site visit in Northern Virginia, information from two complaints investigations, and some anecdotal information concerning problems in a limited number of other grantees. None of this information suggested a nationwide problem in case reporting errors or provided any basis on which to extrapolate the findings to the case data compiled nationally. Indeed, at no time during 1998 did the Corporation have sufficiently quantifiable data to consider amending the national case statistics compiled in the Factbook. In particular, during the summer months when the House Subcommittee and Committee were marking up the Corporation's FY 99 appropriation, the Factbook contained the best and most current information available to the Corporation and the public as to the level of activity as reported by its grantees. Moreover, it was not evident at the time what effect, if any, the CSR data had on the deliberations on the appropriations levels for the Corporation and its grantees. As more information surfaced, LSC has responded appropriately and is working to correct this problem.

2) *Allegation:* "LSC has repeatedly claimed that neither the IG audits nor the GAO investigation found fraud." Mr. Boehm, on the other hand, has repeatedly stated there was fraud.

LSC Response: In no instance has the Corporation, its Inspector General, or the GAO identified any fraud or intentional misrepresentation of the data by any of its grantees. Nor have any of the numerous on-site reviews indicated that taxpayer dollars were being grossly misspent or wasted by grantees. Both the GAO and the IG testified orally to this at the hearing. Eventually, Mr. Boehm also admitted "maybe it's not fraud."

3) *Allegation:* "While it is true that programs receive LSC funds based on the poverty population of the area they serve and not on the number of cases they handle, there are numerous motives for legal services programs to inflate their case numbers."

LSC Response: In its public reporting of activities, which includes CSR data reported by its grantees, the Corporation did not intentionally deceive or mislead the Congress in order to secure for itself and its grantees increased funding, nor did it at any time attempt to hide from the public or Congress the problems which were emerging in the CSR system and its efforts to correct these deficiencies.

Funds are allocated to grantees in each service area according to a Congressionally mandated formula based on poverty statistics in the census. Grantees must participate in a system of competition for these grants as required by law. There is no direct correlation between CSR data and money a grantee receives. To date, Mr. Boehm has failed to provide any evidence to support his charges.

4) *Allegation:* "Those officials who knowingly misled Congress and the public should be removed."

LSC Response: The Corporation has no reason to believe that any grantee or any employee of LSC deliberately withheld information from Congress. As stated before, the GAO and the Inspector General have found no evidence of fraud or abuse.

The Corporation will aggressively pursue corrective action plans and ensure that actions are promptly taken to address problems grantees are experiencing. The Corporation is prepared to take additional steps as necessary and appropriate with any program that fails to adequately address their problems. The Corporation will seek to find more opportunities and innovative methods of ensuring that its guidance is adequately communicated to the necessary personnel at each of its grantees.

5) *Allegation*: Mr. Boehm's statement points out that case statistics are an important performance indicator in trying to determine how much funding LSC should receive. Mr. Boehm argues against any funding increases based on the CSR problems.

LSC Response: The need for legal services is overwhelming. Almost one in every five Americans is potentially eligible for LSC-funded services. Because of limited resources, local legal services programs are forced to turn away tens of thousands of people with critical legal needs. During the last fifteen years, several state legal needs studies have shown that nearly half of all people are turned away who apply for assistance because of lack of program resources. These studies provide the rationale for increasing LSC funding, not the opposite.

Moreover, it does not make sense to reduce funding now because it was determined there were fewer cases closed. The data provided in budget submissions and other documents is to demonstrate past performance based on available funding. LSC distributes its grants based on a congressionally mandated formula determined by poverty population according to the census, not based on the number of cases closed. Grantees also perform other important functions that LSC has not adequately measured in the past, including referrals and outreach in the community. The Corporation is working hard to develop a system to more accurately reflect these activities.

6) *Allegation*: Mr. Boehm claimed that "most" groups providing legal services are not funded by LSC, specifically citing only *pro bono* efforts.

LSC Response: Volunteerism is alive and well in the area of legal aid to the poor. The private bar and LSC programs are working together effectively to serve low-income Americans. LSC grantees are required to devote an amount equal to one-eighth of their LSC grants for private attorney involvement.

Since the early 1980's, the number of *pro bono* attorneys has increased steadily. There are currently about 45,000 lawyers providing representation through formal *pro bono* programs. Some lawyers are involved on an informal basis. Using conservative per hour costs of \$100 per hour and an estimated 10 hours per attorney, this represents a total contribution of at least \$45 million by the legal profession in assistance to the poor. No other profession comes close to contributing such a large volume of free services. But it is not enough.

John Pickering, of Wilmer, Cutler, and Pickering, testified at the hearing that *pro bono* activities do not fill the need. The private bar itself acknowledges it *cannot* take on the work of LSC. Studies show that no more than 20 percent of our poverty population's legal needs are being met. The need for legal services by low-income Americans greatly exceeds the combined capacity of LSC, other funding sources, and the private bar. LSC, especially with the cutbacks it has received in recent years, and *pro bono* attorneys, who work together in many instances, are overwhelmed by the amount of legal needs they face. Together, LSC and *pro bono* attorneys can work toward building a more effective public-private partnership that will address some of those unmet needs, and it is a goal of LSC to continue this effort.

Again, I appreciate the opportunity to answer these allegations and to appear before the Subcommittee to explain how LSC is working to ensure the information it reports to Congress is an accurate portrayal of how federal dollars are being spent on serving the legal needs of low-income Americans. I would be happy to provide you with any additional information or to answer any questions you have on this issue.

Sincerely,

JOHN MCKAY, *President*.

Enc. "A Message from the President," December 1998

cc: Members of the Subcommittee on Commercial and Administrative Law

A MESSAGE FROM THE PRESIDENT

As the holiday season approaches, we have many reasons to celebrate in the world of legal services. News of the first significant increase to LSC's appropriation since 1994 allows us to be optimistic about the future and to anticipate serving even more people in the year ahead.

In the past several months, I have been away from Washington more than I have been here, visiting programs and attending events from coast to coast, and even some out of the country. The highlight of this travel, which included participating in the ABA Annual Meeting in Toronto, speaking to University of Montana Law School and Creighton Law School student, and meeting with several state officials while attending the 20th anniversary of Mid-Missouri Legal Services Corporation, was being in Nome, Alaska for the re-opening of the Alaska Legal Services Corpora-

tion (ALSC) office there. The new office should provide the inhabitants of this vast state, many of whom are several hours from the nearest Legal Services attorney, greater access to legal assistance. I am hopeful that more doors will be opened as we continue to display to Congress that Legal Services programs are worthy of higher funding levels and we are working to support our shared mission of providing access to justice for all Americans.

FY 1999 LSC Appropriations

On October 21, Congress approved an omnibus spending bill for FY 1999 that incorporated the work of eight different spending bills, totaling over \$520 billion. This bill included \$300 million for LSC, a \$17 million increase from FY 1998. \$289 million will go directly to program services for clients. Though we remained optimistic throughout the appropriations process that LSC might get a small increase, the final news was a cause for celebration. More significantly, it represents the strong bipartisan backing that LSC has developed, and signals a renewed confidence that LSC is carrying out the will of Congress and is a vital part of the justice system. The increase will allow LSC-funded programs to serve a greater number of poor and disadvantaged clients more effectively in 1999, and provides us with greater leverage to work for a higher level of funding programs in the upcoming year.

106th Congress

Although we lost a total of six Republican supporters from the House of Representatives in the 1998 elections, including two very important advocates (Reps. Fox-PA and White-WA), Republican moderates in the House will continue to be a crucial voting block, and the Republicans' slim margin (223 to 211) should continue to move the leadership to find "compromise" on a wide range of issues, including funding for LSC. Fifty-one Republican LSC supporters were re-elected. Of the six that will not be returning to Congress, we are confident that their replacements from both parties will increase our support in the House. The election of Rep. Livingston (R-LA) as Speaker of the House will leave open the position of Appropriations Committee Chairman. He will be replaced by Rep. Young (R-FL). We will, of course, be working to establish a good relationship with him and all freshman Members in the coming year.

In the Senate, eleven Republicans who supported LSC in the last vote specific to LSC funding (which occurred in 1995) remain in the Senate. The only Republican supporter defeated on November 3 was Sen. D'Amato (R-NY), and he was replaced by Charles Schumer, a Democrat with a history of supporting LSC in the House. The balance between Republicans and Democrats will remain the same in the Senate (55-45). There are no significant changes expected within the Senate committees that deal with LSC.

Case Service Reporting

Case statistics play an essential role in the budget request and performance plan submitted by LSC to the United States Congress each year. Therefore, the reliability of case statistics submitted by programs so LSC is vital to obtaining continued Federal funding for Legal Services. The Office of Inspector General's (OIG) audits of grantee case service reports (CSR's) raised some preliminary concerns about the consistency with which case statistics have been reported. In response to these concerns, LSC's Office of Program Operations recently issued a revised CSR Handbook which contains useful guidance on case reporting. The OIG will continue to conduct audits of programs' case service reports, and LSC welcomes this effort to help ensure the accuracy of this information.

At the same time, we recognize that counting cases tells just part of the story of the impact that programs have on the lives of low-income people. Many programs have been successful in obtaining funding through the use of information about the outcomes obtained for their clients. We believe that this type of information, as well as information on unmet legal needs, holds great promise for securing increased Federal funding for legal services. Toward this end, LSC will be surveying all programs to seek their input about the types of information which will make the best case for additional funding for legal services.

Vice President for Programs Selected

I am very pleased to announce that LSC has chosen Karen Sarjeant to be our new Vice President for Programs. Karen began her Legal Services career as a Reginald Heber Smith Fellow in 1975. Most recently, she has worked at LSC as the Acting Vice President for Programs after the departure of John Tull and as the Managing Program Counsel of the Competition/Program Performance Unit. She has worked in local program offices in New York and Maryland, at a national support center in Los Angeles, and at the former Seattle Regional Office of LSC. A member of both

the Ohio and Maryland bars, Karen was the 1995 recipient for the Distinguished Service Award from the Maryland Legal Service Corporation.

Farmworker Legal Services of North Carolina

LSC announced on September 21, 1998, that it would not allow Farmworker Legal Services of North Carolina (FLSNC) to be funded as of January 1, 1999. This decision was made after a Congressional inquiry sparked an LSC investigation of a trip to Mexico by employees of FLSNC. LSC found the trip to Mexico was in violation of the LSC Act for representing non-US citizens who were never in the United States. LSC imposed a fine of \$17,050 on the program—an amount equal to all costs associated with this trip—and also instructed Legal Services of North Carolina, the program that contracts with FLSNC to run the migrant farmworker program in the state, to more closely monitor the management and administration of FLSNC until its funding is terminated.

December 1998

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 20, 1999.

KENNETH BOEHM, *Esquire, Chairman,*
National Legal and Policy Center,
McLean, VA.

VIRGINIA L. THOMAS, *Esquire,*
Senior Fellow in Government Studies,
The Heritage Foundation
Washington, DC.

DEAR MR. BOEHM AND MS. THOMAS: Let me begin by thanking you for your participation at last month's oversight hearing on the Legal Services Corporation. Your testimony and written submissions were comprehensive as well as insightful.

As a follow-up to that hearing, Ranking Member Jerrold Nadler requested LSC President John McKay to respond to certain statements that you purportedly made during the course of that hearing. By letter dated October 6, 1999, Mr. McKay supplied each Member of my Subcommittee with his response. To complete the record, however, I believe it would be useful for you to reply to Mr. McKay's response. Your reply will ensure that the record fully addresses the issues.

I look forward to your reply.

Very truly yours,

GEORGE W. GEKAS, *Chairman,*
Subcommittee on Commercial and Administrative Law.

NATIONAL LEGAL AND POLICY CENTER,
McLean, VA, October 28, 1999.

Rep. GEORGE W. GEKAS, *Chairman,*
Subcommittee on Commercial and Administrative Law,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR CHAIRMAN GEKAS: Thank you for your letter of October 20, 1999 informing me that Ranking Member Jerrold Nadler had requested LSC President John McKay to respond to certain statements I purportedly made during the course of the recent hearing about LSC false case statistics. I appreciate the opportunity to provide responses to the issues raised in order to complete the record.

In the interest of continuity, I've provided my responses following verbatim statements of the original allegations and the LSC responses to those allegations.

RESPONSE OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND POLICY CENTER
TO LSC'S RESPONSES TO QUESTIONS RAISED BY REP. NADLER

1) *Allegation:* Mr. Boehm says "Even after the October 1998 vote, Congress was never informed that LSC had found a serious problem of wildly inflated case totals" and suggests that the Corporation lied to Congress about the statistical problem by stating "[w]hen the cover-up was exposed by Congress and the Associated Press and the seriousness of the falsified case totals confirmed by the GAO investigation, LSC officials came up with a string of excuses, all of which have been shown to be as false as the case totals."

LSC Response: At the time it released the Factbook in June, 1998, summarizing the 1997 CSR data along with other information gathered from grantees, LSC had only the preliminary feedback from the Inspector General on the site visit in Northern Virginia, information from two complaints investigations, and some anecdotal information concerning problems in a limited number of other grantees. None of this information suggested a nationwide problem in case reporting errors or provided any basis on which to extrapolate the findings to the case data compiled nationally. Indeed, at no time during 1998 did the Corporation have sufficiently quantifiable data to consider amending the national case statistics compiled in the Factbook. In particular, during the summer months when the House Subcommittee and Committee were marking up the Corporation's FY 99 appropriation, the Factbook contained the best and most current information available to the Corporation and the public as to the level of activity as reported by its grantees. Moreover, it was not evident at the time what effect, if any, the CSR data had on the deliberations on the appropriations levels for the Corporation and its grantees. As more information surfaced, LSC has responded appropriately and is working to correct this problem.

Boehm's Response: The allegation that LSC failed to inform Congress about the serious and widespread case problem even after the October 28 vote is in no way rebutted by LSC's response. The record shows that LSC first admitted the case problem only after being confronted by Rep. Tom Latham at the March 3, 1999 LSC appropriations hearing. LSC's deliberate withholding of information from Congress on the false case totals is underscored by the fact that nothing in the statement submitted by the LSC President, Chairman, and Vice Chairman to the appropriations subcommittee for the March 1999 hearing even hints at any type of case reporting problem.

LSC's response disingenuously focuses on what LSC knew in June 1998 right after the Factbook was released, yet the allegation deals only with LSC's actions after the October 1998 vote. The LSC statement "Indeed, at no time during 1998 did the Corporation have sufficiently quantifiable data to consider amending the national case statistics compiled in the Factbook" is flatly contradicted by the facts uncovered by the House Appropriations Subcommittee and the Associated Press:

- On August 3, 1998, Florida Rural Legal Services admitted to LSC that it only had 5,522 open cases in 1997, not the 44,993 it had claimed. The 39,471 phantom cases never existed, yet were part of the totals given to Congress. LSC has failed to explain what is not quantifiable about these 39,471 bogus cases.
- In December 1998, San Francisco Legal Aid Foundation admitted to LSC that it only had 3,639 closed cases in 1997, not the 15,995 it had claimed. In other words, an incredible 77% of this program's cases—12,356 in all—were phony and should never have been claimed. Again, LSC failed to explain what is not quantifiable about these 12,356 bogus cases.

By the end of 1998, LSC knew that every program audited had serious case reporting problems.

By the end of 1998, LSC knew that in just the two programs cited above, 51,847 bogus cases had been improperly claimed.

By the day of the final vote on LSC funding, October 21, 1998, LSC knew beyond all doubt that the case numbers on which Congress was relying on were false and significantly inflated. LSC officials made a deliberate decision not to inform Congress that the case totals were false.

Perhaps the most disingenuous part of LSC's response is the statement, "Moreover, it was not evident at the time, what effect, if any, the CSR data had on the deliberations on the appropriations levels for the Corporation and its grantees." Perhaps the best way to rebut this statement is to quote LSC President John McKay as to the role of case statistics in the appropriations process:

"Case statistics play an essential role in the budget request and performance plan submitted by LSC to the United States Congress each year."—LSC President John McKay, December 1998

Ironically, McKay's statement about how essential case statistics were to LSC's funding was made in December 1998 at a time when McKay knew the case totals were false and inflated and yet Congress had still not been informed of the false totals.

Let there be any doubt as to the importance of the case statistics to the Congressional funding process, Rep. Hal Rogers, Chairman of the House Appropriations Subcommittee on Commerce, Justice, and State, the Judiciary and Related Agencies, had this to say on March 3, 1999 at the hearing where Rep. Latham exposed the false case cover-up:

"We do make our judgments based on the volume of the load that is represented to us."

As for LSC's response that it has "responded appropriately" to the problem, it's clear from their answers that they refuse to acknowledge that they had any duty whatsoever to inform Congress that the case totals Congress was relying upon were false once LSC knew that to be the case. That is tantamount to saying that withholding critical information from Congress is perfectly acceptable behavior. And LSC wonders why so many in Congress have concluded it's an unaccountable program.

LSC's flagrant dishonesty in its dealings with Congress on this issue makes a compelling case for the reauthorization legislation proposed by Chairman George Gekas which would have eliminated LSC and block-granted funds for legal services to the states.

2) *Allegation:* "LSC has repeatedly claimed that neither the IG audits nor the GAO investigation found fraud." Mr. Boehm, on the other hand, has repeatedly stated that there was fraud.

LSC Response: In no instance has the Corporation, its Inspector General, or the GAO identified any fraud or intentional misrepresentation of the data by any of its grantees. Nor have any of the numerous on-site reviews indicated that tax dollars were being grossly misspent or wasted by the grantees. Both the GAO and the IG testified orally to this at the hearing. Eventually, Mr. Boehm also admitted "maybe it's not fraud."

Boehm's Response: The inquiries by the House Appropriations Subcommittee, the Inspector General's Office and the GAO have turned up mountains of evidence that legal services program lawyers were inflating case totals. The fact that LSC has turned a blind eye to this evidence is consistent with LSC's pattern of behavior in covering up problems in the legal services program.

Examples of questionable actions indicating that legal services lawyers deliberately padded their case counts are found throughout the record:

- In May 1999, John T. Hand, a lawyer who worked for more than 20 years for Westchester/Putnam Legal Services, wrote a letter to the editor of *Investor's Business Daily* stating that he quit, in part, because the legal services program "was counting every telephone call as a 'case' in order to build up numbers to report to LSC and other funding sources."
- The audit of the San Diego program found that 14,000 phone calls by non-lawyers were falsely reported as "legal cases." A phone call by a non-lawyer who does not check the eligibility of the caller is not now nor has it ever been a "legal case." The LSC Act and federal appropriations law mandate that legal services are only available for eligible clients. The fact that the 14,000 callers were turned away by non-lawyers who didn't even bother to check eligibility is about as clear an example as possible that legal services programs were deliberately padding their case numbers to impress LSC, Congress and their other funders.
- The program in Miami overstated the reported number of 21,487 closed cases by a whopping 80%. One of the major reasons was that the program failed to document eligibility, as required by the LSC Act, federal appropriations law and LSC regulations. That a program run by lawyers fails to follow the most basic legal requirements for rendering services would seem to indicate that either the lawyers are grossly incompetent or they are trying to inflate their case totals.

The LSC response that they found no "intentional misrepresentation of the data" may be a result of their apparent policy to ignore evidence even when it was offered on a silver platter in front of them. A telling example is the Florida Rural Legal Services case where a telephone call from a member of the Inspector General's office resulted in the program admitting that only 12% of its open cases were genuine (5,522 of 44,993). The reason for the astounding discrepancy was a claimed "computer error."

When only 12% of a major program's open cases are genuine, you would think that either LSC or its Inspector General would audit or at least investigate the program. Despite repeated requests by a member of the LSC Inspector General's office to the IG to look into the program, the IG refused. LSC had more than ample authority to investigate why only 12% of the program's open cases were genuine yet chose not to investigate. The morale of the story is that it's difficult to find fraud when you're absolutely determined not to look for it.

Aside from the voluminous evidence that programs knowingly inflated their case counts through double-counting cases, falsely counting phone calls as cases, etc., there is ample evidence that both the LSC President and Inspector General delib-

erately failed to inform Congress of the false case statistics prior to the October 21, 1999 Congressional vote which gave LSC a \$17 million funding increase.

Indeed, the LSC IG wrote in an e-mail to members of its staff on September 23, 1998, "the numbers presented to Congress were inaccurate."

If the Inspector General knew Congress was provided inaccurate case numbers a month before the final vote on LSC funding then why didn't he inform Congress?

At the September 23, 1999 hearing of the Subcommittee on Commerce and Administration Law, LSC Inspector General Quatrevaux's statement as to why he didn't report the serious case reporting standards to Congress was:

"Until these quality control procedures are completed, auditors should not report results, because the audit is unfinished and any 'results' are preliminary. An exception is permitted by Government Auditing Standards when the audit uncovers evidence of illegal acts. I would not in this exception for public safety and national security."

The IG's statement represents a major mischaracterization of an IG's duty to provide interim reporting during an audit of significant matters to Members of Congress. Mr. Quatrevaux's self-serving interpretation of Government Auditing Standards is best refuted by directly quoting the Government Auditing Standards at "5. Timeliness":

"The auditors should consider interim reporting, during the audit, if significant matters to appropriate officials. Such communications, which may be oral or written, is not a substitute for a final report, but it does alert officials to matters needing immediate action and permits them to correct them before a final report is completed."

In other words, Mr. Quatrevaux misstated the Government Auditing Standards as limiting interim reporting on an ongoing audit to matters involving illegal acts, public safety and national security. In fact, the Government Auditing Standards provide for interim reporting for "significant matters." One would think that his staff finding close to two-thirds of all claimed cases reported to be bogus might be considered a "significant matter." This is especially so in light of the fact that LSC thought the problem serious enough to rewrite and distribute to all grantees the Case Service Report handbook.

The Inspector General Act requires IGs to keep Congress "fully and currently" informed through "semiannual reports and otherwise" of all "significant problems, abuses, and deficiencies" identified through all IG activities. The LSC IG kept LSC management regularly updated throughout the summer and fall as audit after audit showed serious problems in case reporting. But he told Congress nothing.

Similarly, the LSC President knew during the summer of 1998 and certainly before the October 21, 1999 Congressional vote on LSC funding that the case numbers on which Congress was relying were false and highly inflated. At the same time, it is quite clear that his major objective at the time was getting as large an increase in LSC funding as possible. LSC had received \$253 million in funding in 1997 and the same amount in 1998. At the time the false case totals were discovered, the House had approved \$250 million for FY 1999 and the Senate had approved \$300 million.

With a \$50 million split in funding, a revelation that legal services programs had misreported tens of thousands of cases, failed to check eligibility and were falsely reporting phone calls by clerical workers with only a high school education as "legal cases" is not the type of revelation that would have helped LSC's funding. Since Mr. McKay failed to directly answer Rep. Steve Chabot's question at the hearing as to whose decision it was not to inform Congress of the problem, the public has no way of knowing whether the LSC Board of Directors directed him to keep the matter quiet.

What is clear is that Mr. McKay knew the case numbers given to Congress were false, that every audit found serious problems, that one major program had an astounding 88% of their open cases as completely bogus, and that the situation was so significant that LSC was compelled to rewrite its Case Reporting Services handbook.

What is equally clear is that Mr. McKay took no steps whatsoever to inform Congress that they were relying on case numbers known to be false by LSC at the time they voted a \$17 million increase in LSC funding.

The dictionary defines fraud as being "a deception deliberately practiced in order to secure unfair or unlawful gain." Allowing Congress to vote for a \$17 million increase in LSC funding while relying on statistics known by LSC to be false and hugely inflated is a deliberate deception and obtaining a \$17 million funding increase under false pretenses is an unfair gain.

3) *Allegation:* "While it is true that programs receive LSC funds based on the poverty population of the area they serve and not the number of cases they handle, there are numerous motives for legal services programs to inflate their case numbers."

LSC Response: In its public reporting of activities, which includes the CSR data reported by its grantees, the Corporation did not intentionally deceive or mislead the Congress in order to secure for itself and its grantees increased funding, nor did it at any time attempt to hide from the public or Congress the problems which were emerging in the CSR system and its efforts to correct these deficiencies.

Funds are allocated to grantees in each service area according to a Congressionally mandated formula based on poverty statistics in the census. Grantees must participate in a system of competition for these grants as required by law. There is no direct correlation between CSR data and money a grantee receives. To date, Mr. Boehm has failed to provide any evidence to support his charges.

Boehm's Response: LSC's statement that "nor did it [LSC] at any time attempt to hide from the public or Congress the problems which were emerging" is patently false. At the risk of stating the obvious, neither the Congress nor the public was informed of the serious case reporting problems until Rep. Tom Latham exposed the problem at the March 1999 LSC appropriations hearing. The fact that the written statements of the LSC officials at that hearing contained no mention of the case problems whatsoever underscores the point that LSC had no intention of informing Congress or the public about the problem.

Having attended the March 1999 appropriations hearing on LSC, I can say that it was clear to everyone in the room that LSC had been caught covering up very embarrassing false case figures. The comments of some of the Members of Congress at the hearing reflect this observation:

"Why weren't we informed? I would really like to know."

Rep. Tom Latham

Addressing LSC officials at Mar. 3, 1999 hearing

"I think it needs not to be said but I'll say it anyway. We want accurate information. And we want you to report to us any possible discrepancies that there are. Rest assured that we will find it out one way or another."

Chairman Hal Rogers

Addressing LSC officials at Mar. 3, 1999 hearing

As for the evidence that programs are motivated to inflate case figures to increase their funding, my testimony at the September 29, 1999 hearing set forth many examples:

- Case totals are used by programs in their grant applications to receive funds from state, local and federal programs as well as from private sources.
- Case totals are a factor in the competition for LSC grants which Congress mandated in 1996.
- Exaggerating or falsifying case totals helps LSC lobby Congress for a greater overall budget, which directly increases LSC funds to each program.

I did not fail to mention examples of how false case totals helped legal services programs financially. LSC just failed to refute any of the examples given.

4) *Allegation:* "Those officials who knowingly misled Congress and the public should be removed."

LSC Response: The Corporation has no reason to believe that any grantee or any employee of LSC deliberately withheld information from Congress. As stated before, the GAO and the Inspector General found no evidence of fraud or abuse.

The Corporation will aggressively pursue corrective action plans and ensure that actions are promptly taken to address problems grantees are experiencing. The Corporation will seek to find more opportunities and innovative methods of ensuring that its guidance is adequately communicated to the necessary personnel at each of its grantees.

Boehm's Response: LSC is now claiming that it will "aggressively pursue corrective action plans." At the time the GAO reported that five of the largest legal services programs had overstated the cases they handled by one-third, LSC publicly claimed that the problem had already been corrected. Indeed, the Associated Press reported:

"Agency officials said the problems were caused by bookkeeping errors that have been corrected and that the agency did not intentionally mislead Congress."

"Legal Services Programs Overreported Cases, Says GAO"
The Legal Intelligencer, June 28, 1999

Unfortunately for LSC's claim that they had corrected the problem, the second phase of the GAO investigation found that LSC had not corrected the problem. In the GAO Report *Legal Services Corporation: More Needs to be Done to Correct Service Reporting Problems*, released on September 20, 1999, the GAO concluded that, "we do not believe that LSC's efforts to date have been sufficient to fully resolve the case reporting problems that occurred in 1997." (emphasis added)

The details of the GAO report describe a program that can't even accurately count the number of cases it handles:

- Approximately 30 of the 50 largest legal services grantees could not even certify that their 1998 case figures were substantially correct.
- The LSC-initiated "self-inspection" which resulted in about 30 of the 50 largest programs being unable to certify the 1998 case figures as substantially correct did not even attempt to identify duplicate cases despite the fact that duplicate cases were a major problem area in both the LSC IG audits and the earlier GAO investigation.
- GAO reported: "LSC officials told us that they were surprised that such a large number of grantees were able to certify their 1998 data." These must not have been the same LSC officials who told the Associated Press that the problems had been solved.
- The GAO found that programs which had error rates in excess of 5% were still claimed by LSC as having certified to be substantially correct (less than 5% error rate). GAO even found a program which had an executive director who did not certify her case totals to be substantially correct. LSC nevertheless counted the program as being certified by that executive director as being correct.
- Further clouding any credibility for the LSC's "self-inspection" was the GAO finding that "LSC had done no verification of the grantees' self-inspection procedures."

In short, the GAO Report found that not only were there problems with the 1997 case figures but there were significant problems with the 1998 figures as well. LSC's public relations claims that the problems are minimal and that the problems have been solved have both been categorically refuted by the GAO findings.

At this time LSC doesn't have any credible figure for the number of cases handled by legal services programs in either 1998 or 1997.

LSC claims that it has "no reason to believe that any grantee or any employee of LSC deliberately withheld information from Congress." Since it's abundantly clear that a great deal of information was withheld from Congress, any claim that information wasn't deliberately withheld borders on the outlandish. Much like the case figures themselves. Much like the LSC President's initial claim to the Associated Press that the numbers were "slightly off." Much like LSC's claim that the problem was already solved.

To put it mildly, this entire case has shown Congress and the public that LSC cannot be trusted to disclose serious problems.

Even more telling is the fact that once Congress, the media and the General Accounting Office exposed the seriously false case claims, LSC failed to take appropriate steps to solve the problem.

As to the question of whether the LSC President and Inspector General should be removed, it can be argued that nothing better illustrates the failure of LSC to reform itself than maintaining in office two top officials who covered up the case reporting scandal from Congress. The debate in Congress about the legal services program over the last several years has centered on whether the program has been able to reform itself. LSC proponents have argued that the 1996 restrictions have substantially eliminated abuses while critics have pointed to a steady stream of new abuses to claim that LSC is incapable of reform.

As long as the LSC President and Inspector General remain in office, critics will be able to point out that both knew well before the October 21, 1998 Congressional vote on LSC funding that:

- Congress was relying on false and highly inflated case figures
- LSC and its Inspector General had found a clear pattern of case inflation at every program examined
- one major program alone had more than 39,000 totally fictitious cases
- the Semiannual Report to Congress filed by both the LSC IG and LSC for the six-month period ending September 30, 1998 falsely answered the question as to any "Significant problems, abuses or deficiencies" with the answer "None"

Moreover, both the LSC President and the LSC IG have painted themselves into corners with their own 1998 statements.

LSC President McKay's December 1998 comment underscored the fact that he knew very clearly the relationship between case numbers and increased funding:

"Case statistics play an essential role in the budget process and performance plan submitted by LSC to the United States Congress each year. Therefore, *the reliability of case statistics submitted by programs to LSC is vital to obtaining continued Federal funding for legal services.*" (emphasis added)

And the LSC IG's September 23, 1998 e-mail to selected members of his staff ("the numbers provided to Congress were inaccurate") leave no doubt as to what he knew and when he knew it.

Beyond a doubt, both the LSC President and IG knew the case numbers were absolutely essential to obtaining increased LSC funding. They both knew they were false. They both had a duty to inform Congress of the problem. And they both decided not to inform Congress.

By any ethical or professional standard, both individuals should have resigned months ago. No useful purpose is served by them staying in office except one: they both are living symbols of how unaccountable the legal services program has become.

5) *Allegation:* Mr. Boehm's statement points out that case statistics are an important performance indicator in trying to determine how much funding LSC should receive. Mr. Boehm argues against any funding increases based on the CSR problems.

LSC Response: The need for legal services is overwhelming. Almost one in five Americans is potentially eligible for LSC-funded services. Because of limited resources, local legal services programs are forced to turn away tens of thousands of people with critical legal needs. During the last fifteen years, several state legal needs studies have shown that nearly half of all people are turned away who apply for assistance because of lack of program resources. These studies provide the rationale for increasing LSC funding, not the opposite.

Moreover, it does not make sense to reduce funding now because it is determined there were fewer cases closed. The data provided in budget submissions and other documents is to demonstrate past performance based on available funding. LSC distributes its grants based on a congressionally mandated formula determined by poverty population according to the census, not based on the number of cases closed. Grantees also perform other important functions that LSC has not adequately measured in the past, including referrals and outreach in the community. The Corporation is working hard to develop a system to more accurately reflect these activities.

Boehm's Response: LSC can't have it both ways. During appropriations hearings in recent years, LSC officials have routinely argued that because they do so many cases, they should be funded at a higher level to do even more cases. They have even gone so far as to ask for specific increases in order to be able to do specific additional numbers of cases. When the claimed cases are exposed as fictitious, LSC essentially argues that it doesn't really matter how many cases they've done.

Virtually every other government program is expected to demonstrate some linkage between services rendered and tax funding received. LSC's argument that Congress ignore the "Incredible Shrinking Legal Services Caseload" is an argument that Congress provide a blank check and not consider exactly what it is or isn't getting for its money.

LSC's response also failed to note that "legal needs studies" being cited are uniformly self-serving studies conducted by allies of the legal services program to justify increased appropriations. All too often, the studies exaggerate any consumer problem, landlord problem or dispute with a neighbor into a "legal need."

Additionally, the LSC response failed to note that only a tiny percentage of civil legal needs of the poor are met by LSC-funded programs. That was true even before the GAO investigation confirmed the massive and systemic presence of fictitious cases in the claimed caseload.

6) *Allegation:* Mr. Boehm claimed that "most" groups providing legal services are not funded by LSC, specifically citing only *pro bono* efforts.

LSC Response: Volunteerism is alive and well in the area of legal aid to the poor. The private bar and LSC programs are working together effectively to serve low income Americans. LSC grantees are required to devote an amount equal to one-eighth of their LSC grants for private attorney involvement.

Since the early 1980's, the number of *pro bono* attorneys has increased steadily. There are currently about 45,000 lawyers providing representation through formal *pro bono* programs. Some lawyers are involved on an informal basis. Using conservative per hour costs of \$100 per hour and an estimated 10 hours per attorney, this

represents a total contribution of \$45 million by the legal profession in assistance to the poor. No other profession comes close to contributing such a large volume of free services. But it is not enough.

John Pickering, of Wilmer, Cutler and Pickering, testified at the hearing that *pro bono* activities do not fill the need. The private bar itself acknowledges it cannot take on the work of LSC. Studies show that no more than 20 percent of our poverty population's legal needs are being met. The need for legal services by low-income Americans greatly exceeds the combined capacity of LSC, other funding sources, and the private bar. LSC, especially with the cutbacks it has received in recent years, and the *pro bono* attorneys, who work together in many instances, are overwhelmed by the amount of legal needs they face. Together, LSC and *pro bono* attorneys can work toward building a more effective public-private partnership that will address some of those unmet need, and it is the goal of LSC to continue this effort.

Boehm's Response: LSC did not dispute my point that most groups providing legal services to the poor are not funded by LSC. The reason they did not dispute it is because they know it's true.

LSC's contention that some 45,000 lawyers are providing approximately 450,000 hours of *pro bono* service valued at \$45 million through panels is highly misleading.

According to *Pro Bono News* (New York State Bar Association, Summer, 1999, Volume 9, Number 2, pages 1 & 4), a recent survey estimated that New York attorneys provided more than 2,000,000 hours of *pro bono* service in 1997. Using LSC's own conservative estimate valuing such service at \$100 per hour, New York alone provides more than \$200 million in free legal assistance to the poor.

It goes without saying that LSC's response arguing that there's just \$45 million in *pro bono* assistance to the poor nationally is inconsistent with the fact that one state alone was producing over \$200 million in free legal assistance to the poor.

According to a 1996 study by a former LSC Inspector General, David Wilkinson:

- private lawyers perform an estimated 24,000,000 hours of *pro bono* work annually valued at approximately \$3.3 billion—many times the amount provided by LSC-funded programs
- more than 1,350 providers of legal services to the poor receive no LSC funds and have budgets which total over \$200 million
- between 400,000 and 600,000 lawyers provide *pro bono* legal assistance

Source: "Legal Services for the Poor: Is Federal Support Necessary?" *Alternatives in Philanthropy*, Capital Research Center, Washington, D.C. November 1996

LSC's own records indicate that 13 of the 15 programs it funds in New York receive more funding from non-LSC sources than LSC. And programs receiving no LSC funds easily outnumber those receiving such funds.

Moreover, the GAO investigation (*Legal Services Corporation: Substantial Problems in 1997 Case Reporting By Five Grantees*) found questionable, invalid or non-existent cases at the LSC-funded program in New York City ranging from 36 per cent to 48 per cent, making it one of the worst programs in the country with respect to phantom cases.

By any objective yardstick, either qualitative or quantitative, the provision of legal services to the poor is better from non-LSC sources than LSC sources.

Perhaps the most positive result of this past year's investigation of the legal services program's dysfunctional case counting methods by Congress, the media and the GAO is that future claims by LSC will be examined closer.

A review of every appropriations hearing on LSC in the House of Representatives in the last five years shows two interesting facts:

- in each one LSC has used the number of cases handled by their programs as a key argument for more funding, and
- LSC has never mentioned that *pro bono* legal assistance delivers far more help to the poor than anything provided by LSC-funded programs

The public and Congress are entitled to know the truth about what tax funds to LSC have purchased.

LSC did not provide the truth to Congress last year while LSC funding was being voted.

LSC did not provide the truth once Congress and the Associated Press exposed the false case claims. LSC's claim that the numbers were "slightly off" was shown to be less than truthful by the GAO investigation that the problem was significant and widespread.

LSC did not provide the truth when it claimed "the problems were caused by bookkeeping errors that have been corrected." The second GAO report determined that, in fact, LSC had not been sufficient to solve the problems.

Again, I appreciate this opportunity to comment in order to complete the record. Your leadership in providing oversight for this controversial program is especially appreciated. Had Congress followed your lead by eliminating LSC and block granting legal services funds to the states, the public would have been spared the spectacle of the falsified case counts. Please don't hesitate to call on me if I can be of assistance to your efforts.

Sincerely,

KENNETH F. BOEHM, *Chairman.*

THE HERITAGE FOUNDATION,
Washington, DC, January 12, 2000.

Representative GEORGE GEKAS, *Chairman,*
Subcommittee on Commercial and Administrative Law,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR CHAIRMAN GEKAS: Thank you for your continued efforts to bring accountability to the expenditure of taxpayer dollars by the Legal Services Corporation (LSC). I also appreciate the opportunity you have afforded me to respond to the exchange of letters between Ranking Member Jerrold Nadler and LSC President John McKay regarding my testimony before your subcommittee in September of last year. I found Mr. McKay's comments to be of little assistance to the committee's efforts to find out how many people were served with federal dollars and why there was such gross over-reporting. Instead his answers to questions posed by your ranking Member obfuscate and divert attention from the central matter under consideration at your hearing—the unprecedented collapse of reported cases served by federal funds through the Legal Services Corporation.

Here are my responses to six points that seemed to challenge my testimony:

1. Allegation: Ms. Thomas claimed that the 1999 LSC factbook was "due" to Congress in May, and is now four months late.

LSC Response: The LSC factbook is never "due" to Congress because it is a document that is produced voluntarily by the LSC. In fact, from 1992–1996, LSC did not produce a factbook at all because it felt the information contained in its annual Budget Request and Annual Report was sufficient to communicate information on program activities to Congress. The factbook was resumed in 1998 (containing 1997 data) by staff initiative.

Thomas' Response: Although I agree that the LSC Factbook is indeed submitted voluntarily, the LSC has yet to provide its 1998 data to Congress, the press, and the American public. This data, in comparison to the 1998 submission, is indeed overdue and has forced Congress, in the wake of a collapse of LSC's 1997 performance data, to make appropriations for the LSC without sufficient knowledge of LSC's operations and performance. LSC's failure to produce this important information indicates potential problems with 1998 figures. Further, this stonewalling makes an excellent case for Congress considering mandating annual factbooks, with certified data from each grantee as to how they spent federal funds in accordance with statutory requirements.

2. Allegation: Ms. Thomas also claimed that LSC dramatically reduced its estimate on clients served from 1.9 million to 1.1 million, and she used this reduction to cast suspicion on LSC's general credibility to provide information to Congress.

LSC Response: Ms. Thomas confused the fact that LSC's initial estimate of 1.9 million combined the total of cases closed in 1997 with the total of cases still open at the end of the year. LSC's figure of 1.1 million for 1998 only included closed cases, and was reduced from an original estimate of 1.3 million closed cases after LSC required its grantees to complete a self-inspection of their 1998 data.

Thomas' Response: Mr. McKay alleges that I misunderstood that the 1.9 million figure combined the total cases closed in 1997 with the total cases still open at the end of the year. In fact, LSC was the one to combine or double count cases open in 1996 in the 1996 Fact Book and closed in the 1997 Fact Book to inform the Congress, press and public that they served 1.9 million clients. To suddenly find such combinations misleading is an admission to a longstanding policy that LSC embraced apparently until recently. In 1997, LSC reported to Congress that it had closed 1.4 million cases in 1997 and had 471,000 cases remaining

open at the end of the year. This is the information that LSC used to lobby Congress for increased funding in FY 1999 and FY 2000.

Congress even relied on this data when it decided to increase funding for the LSC by \$17 million dollars. *In the hearing you held in September of 1999, LSC appeared to admit that the number of closed cases appear to number approximately 1.1 million—a figure 360,000 fewer than previously reported to Congress. This figure is the lowest annual caseload number presented to the Congress in the history of the program. As far as I know, Congress still has not seen the specific grantee-by-grantee reporting of cases for 1998.*

Upon further examination, LSC's 1997 figures fall apart. Numerous audits and examinations have come up with evidence that shows these are inflated numbers, thus forcing LSC to admit to a much lower caseload in both 1997 and 1998. Even the most recent audits show evidence of ongoing case reporting problems. New audits released in June of 1999 and later include the following statistics:

- In a 1997 audit of the Gulf Coast Legal Foundation in Houston, TX, the LSC Inspector General found that "677 cases that were several years old were reported closed in 1997 when services had been finished prior to 1997" and that another "1,338 cases should not have been reported due to lack of documentation, no legal services were provided, were duplicates of previously reported cases, or clients' income exceeded LSC guidelines."
- The Inspector General's final audit reports on 1998 case statistical data for four grantees from New York, Pennsylvania, Maryland, and Missouri found that "grantees overstated closed cases by almost 13,000, and that closed case error rates ranged from 24 to 43 percent."
- The Inspector General's December 1999 review of case statistical reports for Legal Services of North Texas found that the number of cases closed was overstated by 3,964 cases, while open cases were overstated by 206 cases. This mis-reporting was attributed to telephone hotline "cases" in which names were not obtained and recorded in case files, counting cases in which applicants were denied service, or were ineligible for service because their income exceeded LSC guidelines, counting cases as closed although legal activity had ceased much earlier, and reporting cases more than once.
- In June of 1999, the General Accounting Office found similar reporting errors to those the IG had found. An audit of 5 of LSC's largest grantees, Baltimore, Chicago, Los Angeles, New York City, and Puerto Rico, found that 1/3 of the 1997 cases were questionable.

Through independent accounting, we now know those LSC grantees:

- Did not fully determine eligibility;
- Counted single cases more than once;
- Counted non-LSC funded cases in annual reports;
- Allowed excessive inventories of open cases to buildup and report these open cases to LSC over and over again in annual reports; and
- Reported cases to LSC that never existed.

The fact of the matter is that across the country grantees are inflating caseloads with the knowledge that increased caseloads means increased funding. LSC needs to be held accountable for these errors. Instead, grantees are wasting resources as Washington bureaucrats try to describe these serious discrepancies as isolated incidents that do not affect the overall work of the LSC.

Additionally, I would also point out that if there were no real discrepancies in the caseload data, the LSC would not have had to issue a press release explaining the incorrect reporting based on, among other things "weaknesses in grantee management controls." (LSC press release "Statement of Case Reporting System" April 8, 1999)

3. *Allegation:* Ms. Thomas' Backgrounder that she submits as her written testimony, entitled "Time for Congress to Hold the Legal Services Corporation Accountable," uses incomplete information and misuses quotes by LSC officials to back up an argument that is fundamentally flawed. This article uses the following quote from an LSC "Message from the President" to claim that case statistics are used by Congress to determine LSC's appropriation, and that LSC officials were aware of this fact and were therefore attempting to hide CSR problems from Congress: "Case statistics play an essential role in budget requests and the performance plan submitted by the Legal Services Corporation to Congress each year. Therefore, the reliability of case statistics submitted by programs to LSC is vital to obtaining con-

tinued Federal funding for Legal Services . . . This type of information holds great promise for securing increased Federal funding.

LSC Response: Unfortunately, several sentences from the actual quote are omitted in Ms. Thomas' testimony, changing both the nature and the meaning of the statement. It was actually meant to emphasize the actions LSC was taking to ensure it received accurate data from its grantees and to explain that it recognized counting cases did not fully capture the scope of activities conducted by its grantees. The document from which this quote was taken is attached for the record once again.

Thomas' Response: I believe my paper speaks for itself, and does not, in any way take Mr. McKay's quote out of context. The December 1998 document from the LSC webpage entitled "A Message from the President" speaks for itself. I also submit the full document for you to come to your own judgment as to its meaning.

Looking at what LSC officials knew during the stages of the appropriations process makes these quotes even more relevant. In July of 1998 the LSC was informed by the IG of over-reporting problems in the 1998 factbook that was submitted to Congress. In October of 1998, Congress voted to increase funding for LSC to \$300 million without knowledge of these case-reporting problems, which only came to light in March and April of 1999, causing LSC to publicly reevaluate its data. This "Message from the President" of the LSC indicates the proper understanding of the role of caseload statistics in the appropriations process. Coupled with the knowledge that LSC knew it had case reporting problems and did not reveal them to Congress, these quotes speak for themselves and are not taken out of context at all. Any other interpretation of this public memo distorted the truth.

4. Allegation: Ms. Thomas also makes the argument that federal funding may not most effectively serve the legal needs of the poor. She states: "The responsibility for providing legal services to the poor belongs more appropriately to state and local officials and to private-sector institutions—those closest to the people in need of assistance."

LSC Response: LSC receives a yearly appropriation from Congress to administer grants to local programs so they can provide legal services; currently LSC gives grants to 257 programs that serve every state and county in the nation. These programs are independent, non-profit corporations that are governed by Boards of Directors representative of the local community, appointed by local bar associations and partly consisting of client representatives appointed by client groups. The role of LSC is, however, an essential component of the national legal services program. Other sources of funding are simply not available in some parts of the country; in these areas legal services for the poor would be effectively terminated if LSC was completely or even partially defunded. In other areas, the base funding provided by LSC is what helps a program leverage funding from other sources and is the infrastructure that holds the entire system together.

Thomas' Response: I would answer that private, pro bono legal efforts are alive and well, as around 500,000 lawyers provide this type of assistance across the country. In New York alone attorneys provided more than 2,000,000 hours of pro bono service. If one estimates the value of that service at \$100 per hour, that's \$200 million dollars in legal assistance to the poor. Law firms across the country are engaged in pro bono work while church and community groups coordinate efforts of their own. With the LSC unable to keep track of the use of its funding across the country, the case for state, local, and private administration of legal services grows stronger. LSC claims they are coordinating local efforts across the country, but why not let local officials, who know their communities best, coordinate these efforts without the interference of the federal government. Eliminating LSC administrative funding and transferring the money to the states via block grant is much more efficient use of taxpayer dollars and will translate into a more localized effort to serve our nation's poor.

5. Allegation: Ms. Thomas faults LSC for not meeting all the legal needs of the poor. Her article states: "No one denies that the less privileged in society benefit significantly from free legal assistance. However, the LSC services only about 5% of the eligible poor. The lives of thousands of people have been improved by the efforts of pro bono attorneys and the ad hoc network of organizations and people, such as private foundations, churches, synagogues, that have stepped up to assist the poor when they are in need."

LSC Response: LSC has attempted for years to serve a greater percentage of eligible low-income people. However, LSC has never been funded adequately enough to meet its original goal of providing two legal services attorneys per 10,000 poor peo-

ple. For example, in 1998, the federal appropriation per poor person was less than \$8.00. LSC grantees help coordinate the pro bono efforts to which this article refers. Each program is required to dedicate at least 12.5 percent of the funding it receives from LSC to Private Attorney Involvement (PAI). As a result there are now 45,000 lawyers providing representation through LSC-funded pro bono programs. Local legal services programs provide the necessary structure and management that makes it possible for private attorneys to become involved and contribute free legal services. LSC is a model public-private partnership, and works with the private bar and other entities to leverage millions of dollars for legal services. Knowing it must work with limited federal dollars, LSC welcomes the participation of any groups willing to help in its efforts to meet the legal needs of poor Americans.

Thomas' Response: LSC takes issue with the fact that I fault them for serving only 5% of the legal needs of the nation's poor and claims that with increased funding they would be able to serve an even greater percentage. They miss my point entirely. LSC does not make good use of the money they are given, as evidenced by their grantee reporting problems, but continues to ask for increases in funding. Meanwhile, LSC's costs for serving clients have nearly doubled in the past few years. As the federal subsidy increases, the amount of work done to help the poor remains the same. There must be ways to make better use of these taxpayer dollars to serve the legal needs of the poor.

6. *Allegation:* Ms. Thomas makes several suggestions on how Congress should respond to LSC's case reporting problems, one of which is the following: "Congress should specify better performance measures that would include credible data on the quality, and not simply the quantity of the services the LSC provides to the poor."

LSC Response: LSC agrees. Many critical legal services that do not meet the definition of a "case" are provided to individuals by LSC grantees. Although some cases were invalidated because they did not result in "legal assistance," they were nonetheless were proper and valid services, such as distribution of legal educational materials, assistance with pro se matters, and referrals to other non-profit agencies. In today's world, many legal problems can be solved outside of the courtroom or prevented in the first place. LSC has begun working on developing a new system that will reflect more types of services that are being delivered by grantees. This new system thus will portray more clearly the range of legal services provided to low-income Americans.

Thomas' Response: I am glad that Mr. McKay agrees on the need for Congressionally specified performance measures for the LSC. Trustworthy data about caseloads, clients, rejected clients, and agency operations is critical as Congress tries to assess the performance and funding of the LSC. Further, Congress should:

- Require an independent audit of all 1997 and 1998 LSC case statistics.
- Prevent LSC from administratively changing the definition of "reportable" cases.
- Apply the Federal False Statements Act to the LSC and its grantees to prevent future misrepresentation of facts during the appropriations process.

I thank you for the chance to comment on Mr. McKay's rebuttal to my statement. If the LSC can provide misleading statements to the Congress to bolster their ability to increase taxpayer dollars provided to them and Congress does not alter the way they treat this entity, performance-based government will be deemed a sham and a fraud, in my opinion. Congress needs to focus on funding and supporting the programs that work, not the programs that compete with the private sector, and misuse or mis-report authorized funds.

Sincerely,

VIRGINIA L. THOMAS, *Senior Fellow, Government Studies.*

Attachment



WHAT'S NEW	●	LSC DIRECTORY
ACTS/REGULATIONS	●	LINKS
LSC STRUCTURE	●	E-MAIL LSC
LSC FILE	●	INSPECTOR GENERAL
ARCHIVE	●	

A Message from the President

As the holiday season approaches, we have many reasons to celebrate in the world of legal services. News of the first significant increase to LSC's appropriation since 1994 allows us to be optimistic about the future and to anticipate serving even more people in the year ahead.

In the past several months, I have been away from Washington more than I have been here, visiting programs and attending events from coast to coast, and even some out of the country. The highlight of this travel, which included participating in the ABA Annual Meeting in Toronto, speaking to University of Montana Law School and Creighton Law School students, and meeting with several state officials while attending the 20th anniversary of Mid-Missouri Legal Services Corporation, was being in Nome, Alaska for the re-opening of the Alaska Legal Services Corporation (ALSC) office there. The new office should provide the inhabitants of this vast state, many of whom are several hours from the nearest Legal Services attorney, greater access to legal assistance. I am hopeful that more doors will be opened as we continue to display to Congress that Legal Services programs are worthy of higher funding levels and are working to support our shared mission of providing access to justice for all Americans.



John McKay
President

FY 1999 LSC Appropriations

On October 21, Congress approved an omnibus spending bill for FY 1999 that incorporated the work of eight different spending bills, totaling over \$520 billion. This bill included \$300 million for LSC, a \$17 million increase from FY 1998. \$289 million will go directly to program services for clients. Though we remained optimistic throughout the appropriations process that LSC might get a small increase, the final news was a cause for celebration. More significantly, it represents the strong bipartisan backing that LSC has developed, and signals a renewed confidence that LSC is carrying out the will of Congress and is a vital part of the justice system. The increase will allow LSC-funded programs to serve a greater number of poor and disadvantaged clients more effectively in 1999, and provides us with greater leverage to work for a higher level of funding for programs in the upcoming year.

106th Congress

Although we lost a total of six Republican supporters from the House of

Representatives in the 1998 elections, including two very important advocates (Reps. Fox-PA and White-WA), Republican moderates in the House will continue to be a crucial voting block, and the Republicans' slim margin (223 to 211) should continue to move the leadership to find "compromise" on a wide range of issues, including funding for LSC. Fifty-one Republican LSC supporters were re-elected. Of the six that will not be returning to Congress, we are confident that their replacements from both parties will increase our support in the House. The election of Rep. Livingston (R-LA) as Speaker of the House will leave open the position of Appropriations Committee Chairman. He will be replaced by Rep. Young (R-FL). We will, of course, be working to establish a good relationship with him and all freshman Members in the coming year.

In the Senate, eleven Republicans who supported LSC in the last vote specific to LSC funding (which occurred in 1995) remain in the Senate. The only Republican supporter defeated on November 3 was Sen. D'Amato (R-NY), and he was replaced by Charles Schumer, a Democrat with a history of supporting LSC in the House. The balance between Republicans and Democrats will remain the same in the Senate (55-45). There are no significant changes expected within the Senate committees that deal with LSC.

Case Service Reporting

Case statistics play an essential role in the budget request and performance plan submitted by LSC to the United States Congress each year. Therefore, the reliability of case statistics submitted by programs to LSC is vital to obtaining continued Federal funding for Legal Services. The Office of Inspector General's (OIG) audits of grantee case service reports (CSR's) raised some preliminary concerns about the consistency with which case statistics have been reported. In response to these concerns, LSC's Office of Program Operations recently issued a revised CSR Handbook which contains useful guidance on case reporting. The OIG will continue to conduct audits of programs' case service reports, and LSC welcomes this effort to help ensure the accuracy of this information. > **

At the same time, we recognize that counting cases tells just part of the story of the impact that programs have on the lives of low-income people. Many programs have been successful in obtaining funding through the use of information about the outcomes obtained for their clients. We believe that this type of information, as well as information on unmet legal needs, holds great promise for securing increased Federal funding for legal services. Toward this end, LSC will be surveying all programs to seek their input about the types of information which will make the best case for additional funding for legal services. > ***

Vice President for Programs Selected

I am very pleased to announce that LSC has chosen Karen Sarjeant to be our new Vice President for Programs. Karen began her Legal Services career as a Reginald Heber Smith Fellow in 1975. Most recently, she has worked at LSC as the Acting Vice President for Programs after the departure of John Tull and as the Managing Program Counsel of the Competition/Program Performance Unit. She has worked in local program offices in New York and Maryland, at a national support center in Los Angeles, and at the former Seattle Regional Office of LSC. A member of both the Ohio and Maryland bars, Karen was the 1995 recipient of the Distinguished Service Award from the Maryland Legal Services Corporation.

Farmworker Legal Services of North Carolina

LSC announced on September 21, 1998, that it would not allow Farmworker Legal Services of North Carolina (FLSNC) to be funded as of January 1, 1999. This decision was made after a Congressional inquiry sparked an LSC investigation of a trip to Mexico by employees of FLSNC. LSC found the trip to Mexico was in violation of the LSC Act for representing non-US citizens who were never in the United States. LSC imposed a fine of \$17,050 on the program -- an amount equal to all costs associated with this trip -- and also instructed Legal Services of North Carolina, the program that contracts with FLSNC to run the migrant farmworker program in the state, to more closely monitor the management and administration of FLSNC until its funding is terminated.

December 1998

Legal Services Corporation
730 First Street NE, 10th Floor
Washington, DC 20002-4270
(202) 336-8800

PREPARED STATEMENT OF HON. TAMMY BALDWIN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF WISCONSIN

Mr. Chairman, I look forward to hearing from our witnesses today.

There have been many allegations lodged against the Legal Services Corporation in recent years—most, I believe, distorted. I hope today's hearing will allow this subcommittee to shed some light on what is fact, and what is fallacy.

I am a strong believer in the LSC. To make democracy work we must provide equal access to justice—and that means providing legal assistance to low-income citizens. LSC does good work, and deserves more funding, not less, to expand its ability to help indigent persons gain legal counsel and therefore genuine access to the legal process. In today's justice system, unfortunately, justice is not always blind. Numerous academic studies link case outcomes to the wealth of the litigant.

The Legal Services Corporation tries to fill a gap between those that have the funds for adequate legal counsel, and those who do not.

Legal Services does excellent work in my home state of Wisconsin. Working with groups such as Legal Action of Wisconsin, many people who would go without legal assistance in civil cases have been helped. Allow me to cite just two examples of assistance low-income individuals have received in Wisconsin, thanks to help from the Legal Service Corporation.

- A Hmong woman, whose husband had a steady job, suffered complications when giving birth which left her unable to walk. The family was terminated from Medical Assistance, which is Wisconsin's Medicaid program. Legal Action came to the rescue, obtaining health care for the family, and finding them an IndoChinese Clinic where a doctor spoke their native language.

It is hopeful that because of that care, the woman may someday be able to walk again.

- A 51-year old woman, raising a 17-year old daughter, contracted Hodgkins Disease, and was receiving chemotherapy through Medical Assistance. She was terminated from Medical Assistance during her chemotherapy. An attorney with Legal Action was able to restore her Medical Assistance, allowing her to continue her chemotherapy.

So you can see from just these two example, Mr. Chairman, that the assistance the Legal Services Corporation provides is sometimes more than just legal help—it can be a question of life and death.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF EVI REZMOVIC, ASSISTANT DIRECTOR, AND JAN MONTGOMERY, ASSISTANT GENERAL COUNSEL, UNITED STATES GENERAL ACCOUNTING OFFICE

Mr. Chairman, with your permission I will provide a brief oral statement and submit my full written statement for the record.

The Legal Services Corporation uses a Case Service Reporting System, referred to as "CSR" to gather quantifiable information from grantees on the services they provide that meet LSC's definition of a case. After the end of the calendar year each grantee reports the number of open and closed cases to headquarters. The aggregate numbers of cases are then used by LSC in its' annual request for federal funding.

During the past year, both the LSC Office of the Inspector General and we reported on errors by LSC grantees in both the numbers of cases they reported closed during calendar year 1997 and the number of cases reported open at the end of that year. In our June, 1999 report we estimated that nearly 75,000 of the approximately 221,000 cases reported to LSC by 5 of its largest grantees were questionable. In light of these findings we were asked to continue our work to answer 2 new questions. First, what efforts have LSC and its' grantees made to correct case reporting problems and second, to what extent are these efforts likely to resolve the case reporting problems that occurred in 1997.

Our September 20, 1999 report provides our response to these questions. In relation to the first question—We found that LSC has issued a new, 1999 CSR handbook and other written communication to clarify reporting requirements to its grantees. The handbook includes changes to reporting requirements dealing with timely closing of cases, management review of case service reports and for ensuring single recording of cases. It also includes requirements to report LSC-eligible cases, regardless of funding source, and to report cases involving private attorneys separately. The first 2 of these requirements—procedures for timely closing of cases and management review of case service reports were to apply grantees' 1998 data as well as data in 1999 and following.

In responding to a GAO phone survey of 79 program executive directors, most grantees said that the new guidance helped clarify reporting requirements, and virtually all of them indicated that they had or planned to make program changes as a result of the requirements. Many grantees, however, identified areas of case reporting that remained unclear to them. Requirements concerning asset and citizenship/alien eligibility documentation, single reporting of cases, and who can provide legal services were noted as areas of continued uncertainty.

As an additional effort to improve the accuracy of CSR data, LSC required grantees to complete a self-inspection of their open and closed caseload data for 1998. Each grantee was to select and test random samples of open and closed cases to determine whether their already reported 1998 caseload statistics were correct. Among a sizeable list of case file attributes that were to be checked were eligibility information on household income, assets, citizenship attestation for in-person cases, and indication of citizenship/alien status for telephone-only cases. Grantees could certify their data as being substantially correct if errors were found in no more than 5 percent of cases. A total of 261 grantees, or 76 percent, certified their data. The remaining 62 grantees did not. According to LSC, 30 of the 50 largest grantees did not certify their 1998 data. On the basis of the self-inspection results, LSC estimated that grantees closed 1.1 million cases in 1998.

Our review raised concerns about LSC's interpretation of the self-inspection results and about the accuracy of the data provided to LSC by grantees. First, because LSC did not have a standard protocol for grantees to use to report results, grantee information was subject to LSC interpretation of data problems. Second, we were not sure that LSC had applied a consistent definition of "certification." Third, given LSC's instructions to grantees on how to conduct the self-inspection, some smaller grantees may have selected too few test cases from which to assess the accuracy of their data. Finally, LSC did not know how well grantees conducted the self-inspections. We spoke with several executive directors who did not correctly follow LSC's guidance. This may have resulted in some grantees certifying their data when they should not have and others not certifying when they should have.

As a result of these findings, we concluded that LSC's actions, to date, have not been sufficient to fully resolve the case reporting problems that occurred in 1997. We made numerous recommendations—4 directed at clarifying specific reporting requirements, 1 concerning disseminating information concerning reporting requirements and 3 intended to enhance the quality of future self-inspections.

This concludes my oral statement. We would be happy to answer any questions you may have.

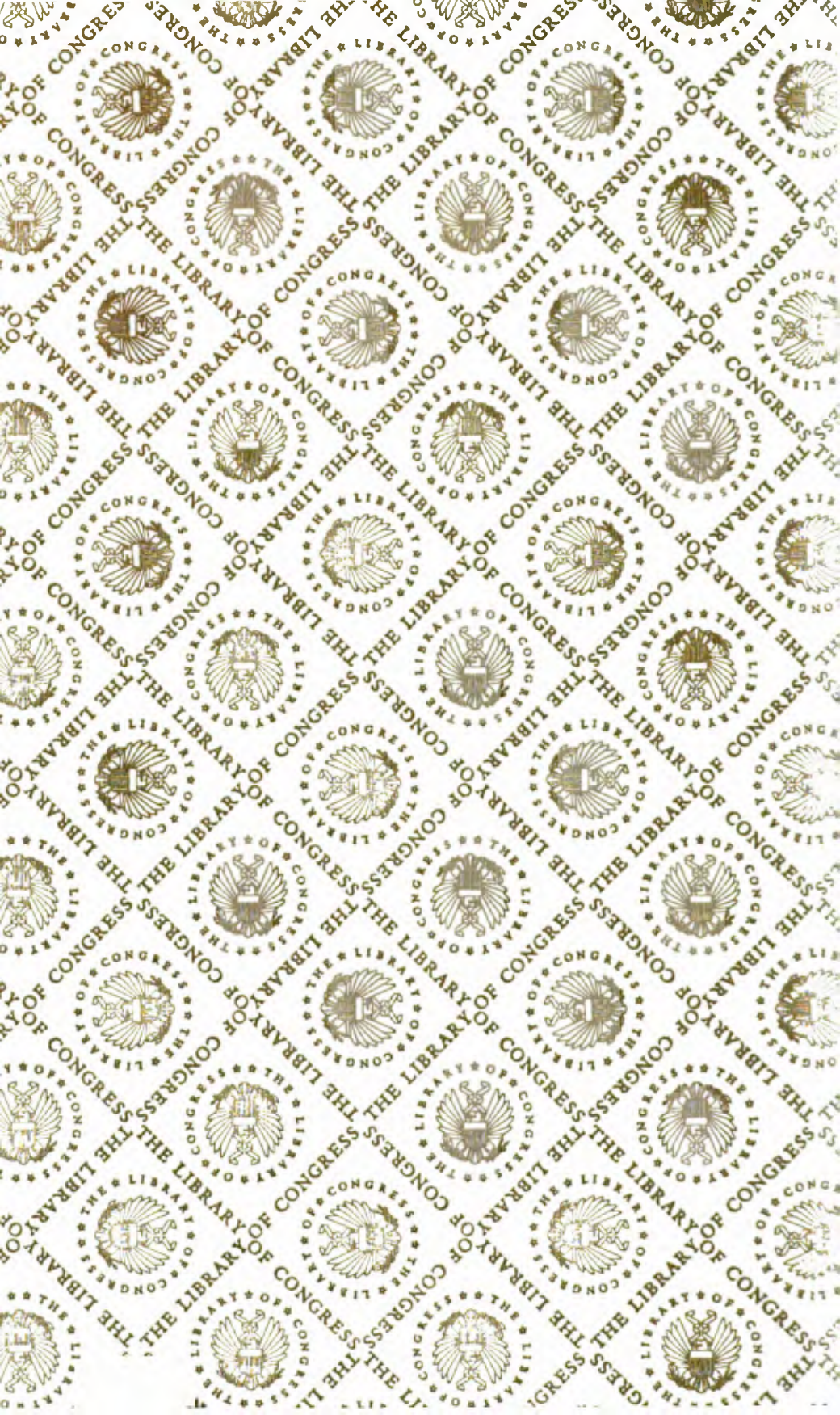
*The report referenced in the above statement can be found on the United States General Accounting Office website (www.gao.gov). A hard copy of the report may be ordered from the GAO (Report number GAO/GGD-99-135R LSC Case Reporting Problems).



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